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NOTES OF CASES

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PUBLISHED WEEKLY DURING THE SITTINGS OF THE COURTS.

[*For the Names of the Barristers contributing the Notes see page* 1.]

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TABLE OF CASES.

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NOTES OF CASES.

Barristers contributing the Notes.

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PRIVY COUNCIL.

EDWARD BULLOCK, Barrister-at-Law.

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ARTHUR CORDERY and WILLIAM COWELL DAVIES, Barristers-at-Law.

Edited by

MONTAGU CHAMBERS, one of Her Majesty's Counsel,
FREDERICK HOARE COLT, and JOHN GEORGE WITT,
Barristers-at-Law.

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COURT OF APPEAL.

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Ex parte ST. JOHN BAPTIST COLLEGE, OXFORD. *Re* THE METROPOLITAN AND DISTRICT RAILWAYS (CITY LINES AND EXTENSIONS ACT), 1879.

Lands Clauses Consolidation Act, 1845, *s.* 69—*Lands taken by Railway Company—Purchase-moneys—Investment—Cash under Control of Court.*

Lands belonging to the above-named college were taken by the Metropolitan and District Railways, under the powers of their Act which incorporated the Lands Clauses Consolidation Act, 1845, and the sum of 5,544*l.*, representing the purchase-moneys, was paid into Court.

The president and scholars of the college petitioned to have the 5,544*l.* invested in India Three-and-a-Half per Cent. Stock, or in India Four per Cent. Stock, and to have the dividends paid to them from time to time until further order.

HALL, V.C., in accordance with his decision in *Ex parte the Rector of Kirksmeaton*, 51 Law J. Rep. Chanc. 581; L.R. 20, Chanc. Div. 203, held that the 5,544*l.* was not cash under the control of the Court, and directed that it should be invested in Three per Cent. Annuities.

The college appealed.

Wintle for the petitioners.

G. R. Kennedy, for the companies, did not oppose the investment, but urged that the costs of the appeal ought not to be thrown upon the companies.

Their LORDSHIPS considered that the fund was clearly cash under the control of the Court within the meaning of Lord St. Leonards' Act, and might be invested accordingly. The companies must pay the costs of the appeal.

HIGH COURT OF JUSTICE.

Chancery Division. FRY, J. Dec. 19.

HUGHES HALLETT *v.* THE INDIAN MAMMOTH GOLD MINES (LIM.).

Trustee and 'Cestui que Trust'—Indemnity—'Quia timet' Action.

The plaintiff had taken shares in the Indian Mammoth Gold Mines (Lim.), as trustee for one Cookesley, on which he had paid 500*l.* out of money supplied by Cookesley, leaving 1,500*l.* uncalled on the shares. An order had been made for winding up the company. One of the objects of the action was to obtain indemnity against Cookesley, who did not defend. It did not appear that any call had been made in the winding up.

W. W. Karslake and *Dobbs* for the plaintiff.

Cozens-Hardy, Q.C., and *Kirby* for the defendants.

FRY, J., dismissed the action against the defendants other than Cookesley on the facts; and held also that, as no injury was shown to have happened to the trustee, he could not give judgment merely for future indemnity.

Chancery Division. Fry, J. Dec. 20. — *In re* White. White *v.* White.

Will—Construction—Election.

A testator had power of appointment over certain settled real estate among the children of his first marriage; in default of appointment, the settled estate went among the children of that marriage. He had a son and several daughters by his first marriage. He married a second time, and had a son and a daughter by his second marriage. By his will, after referring to his settlement, he gave a part of his settled property, and certain other property, to his eldest son, and directed that the property given to his eldest son should be accounted for in dividing his estate among all his children; he gave the rest of his estate to trustees for all his children equally. A question in the action was whether the children of the first marriage were put to their election.

Cookson, Q.C., and *B. B. Rogers* for the children of the first marriage other than the eldest son.

Everitt, Q.C., and *Rawlins* for the eldest son of the first marriage.

Cozens-Hardy, Q.C., and *Dyne* for the children of the second marriage.

Fry, J., held that the children of the first marriage were put to their election.

Chancery Division. Fry, J. Dec. 20. — *In re* Elliott. Elliott *v.* Smith.

Will—Construction—Dying.

The testator in this action gave pecuniary legacies to three persons, and directed that, in case of any of them dying, the legacy of that person should be divided between the others, and gave the same persons his residue, share and share alike. The testator and one of the three legatees were drowned by the same casualty, and there was no evidence to show which survived. A question in the action was whether the gift ever took effect.

Glasse, Q.C., and *Spence, Cookson, Q.C.*, and *Owen, Cozens-Hardy, Q.C.*, and *Micklem* for parties to the action.

Stirling for the Crown, who was entitled to one-third of the residue in default of next-of-kin.

Fry, J., held that dying was confined to dying in the testator's life, and the gift over did not take effect.

Chancery Division. Kay, J. Dec. 8, 15. — *In re* The Columbia Chemical Factory Manure and Phosphate Works (Limited).

Company—Winding-up—Director—Qualification Shares—List of Contributories.

This was an application by the official liquidator of the company to place the name of Sir W. Brett upon the list of contributories.

The articles of association provided that Sir W. Brett and certain others should be the first directors of the company; that the qualification of a director should be the holding of shares to the value of 500*l.*, on which all calls had been paid; and that the office of director should be vacated if the director ceased to hold his qualification.

Sir W. Brett never applied for any shares, and none were allotted to him or registered in his name; but he signed the memorandum for one share and also the articles, and was present at the two meetings, and on those occasions acted as a director. After which he resigned his position as director, and his resignation was accepted. The company went into voluntary liquidation in November, 1879, and a winding-up order was made in January, 1880.

The question now was whether Sir W. Brett, by signing the memorandum of association and acting as a director, had not impliedly contracted to take the number of shares necessary for the qualification of a director.

W. Pearson, Q.C., and *E. S. Ford* for the liquidator.

Graham Hastings, Q.C., and *Brooksbank* for Sir W. Brett.

Dec. 15.—Kay, J., after considering the cases, was of opinion that it was impossible, by any process of fair reasoning, to arrive at the conclusion that Sir W. Brett had agreed expressly or by implication to become a shareholder.

Chancery Division. Pearson, J. Dec. 21. — Nicholson *v.* Smith.

Renewable Lease—Covenant for Renewal—Conditions precedent—Notice of Intention to apply for Renewal—By whom to be given—To whom to be addressed.

By a lease of 1860 (made in pursuance of covenants for renewal contained in two previous successive leases of 1818 and 1839) the lessors leased to the lessees certain premises in the city of London for a term of twenty-one years from June 24, 1860, at a yearly rent of 100*l.* The lease contained a covenant by the lessors that they would, from time to time, before the expiration of the term thereby granted, whenever thereunto required by the lessees, and upon receiving from them 1,000*l.* by way of consideration, fine, or premium, grant to the lessees a new lease of the demised premises to commence from the expiration of the term thereby granted, subject to rent, covenants, &c., the lessees executing a counterpart of the new lease, and paying the expense of the lease and counterpart, and paying to the lessees on the execution thereof respectively by way of consideration, fine, or premium, the sum of 1,000*l.*; and every such new lease was to contain a covenant for renewal, it being the intention of the parties that the lease should be renewable for ever at the option of the lessees, in pursuance of the covenant in the original bond of 1818. The lease also contained a covenant by the lessees that if they did not, before the expiration of the term thereby granted, avail themselves of the option of requiring a new lease, or should not accept such new lease, and execute a counterpart, and pay the whole expense of the new lease and counterpart, and pay, on the execution of the new lease, by way of fine, premium, or consideration, the sum of 1,000*l.*, then the lessees would, previous to the expiration of the term thereby granted, execute certain works upon the demised premises, so as to render up at the expiration of the term a good dwelling-house.

The lessees were the trustees of the guarantee fund of an insurance company. The guarantee fund, of which the demised premises formed a part, was held upon

trust to secure the payment by the company of certain perpetual annuities, and, subject to that primary trust, in trust for the company as part of its general assets.

In June, 1881, the freehold reversion in the demised property was vested, as to one individual moiety, in three trustees, of whom G. S. was one; and, as to the other undivided moiety, in G. S. for life, with remainder to his wife for life, with remainder to the same three trustees.

On June 23, 1881, the lessees had not applied for renewal of the lease, and G. S. wrote to the directors of the company calling attention to the fact that the lease expired next day; and the same day A. H., who was the secretary both of the company and of the trustees of the guarantee fund, and who had not received any formal instructions from the company or the trustees in the matter of the renewal, though there had been conversations on the subject, replied, stating that 'the directors are, of course, prepared to renew the lease.' A new lease not being executed or the fine of 1,000*l.* paid, on June 24 the lessors refused to renew the lease.

The lessees brought an action against G. S. and his wife and co-trustees for specific performance of the covenant for renewal.

Davey, Q.C., *Kingdon*, and *Wolstenholme*, for the plaintiffs, contended that neither the payment of the 1,000*l.*, nor the execution of the new lease, nor the declaration by the lessees of the intention to exercise their option of renewal before the expiration of the former lease, was a condition precedent to the right to claim the renewal; and that if such a declaration of intention was a condition precedent, it had been sufficiently signified by the letter of A. H. to G. S., of June 23, before the expiration of the lease.

Higgins, Q.C., and *Vaughan Hawkins*, for the defendant, contended that the payment, the declaration, and the execution were conditions precedent, and that none of them had been complied with; the letter of June 23 being written by A. H. without authority, and on behalf of the wrong person, and to the wrong person.

PEARSON, J., held that the payment of the 1,000*l.* and the execution of the new lease were not conditions precedent; but that the declaration of intention to exercise the option was so; and that A. H., as secretary to both the company and the trustees, was authorised by both and in duty bound to apply for the renewal; and that his letter, if regarded as being on behalf of the company, was on behalf of the parties really interested in the renewal; that it was sufficiently addressed to G. S., without its being necessary for it to be addressed to the latter's co-trustees; and that the lessees had, therefore, complied with the condition precedent, and were entitled to the renewal of the lease, and the costs of the action.

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Jan. 16.

WILSON *v.* TURNER.

Maintenance—Trust or Power for—Ability of Father to maintain—'Ransome v. *Burgess not followed.'*

Appeal from decision of BACON, V.C., affirmed.

A question was raised on this appeal, which was not argued in the Court below, whether a declaration contained in a marriage settlement 'that the trustees or trustee shall after the death of (wife) apply the whole or such part as the said trustees or trustee shall think fit of the annual income of the share or fortune to which any child shall from time to time be entitled in expectancy under the trusts hereinbefore declared for or towards the maintenance or education of such child' (the husband surviving having no life interest under the settlement), did not entitle the father to require the trustees to provide maintenance, irrespective of his (the father's) capacity to maintain his children.

Ransome v. *Burgess*, 36 Law J. Rep. Chanc. 84; L.R. 3 Eq. 773, was relied on.

Davey, Q.C., and *Mulligan* appeared for the appellant.

Marten, Q.C., and *Owen* for the respondent.

Their LORDSHIPS held that the father was not so entitled, and declined to follow that decision; LINDLEY, L.J., observing that the Vice-Chancellor had, in that case, erroneously extended the principles of the case o *Mundy* v. *Howe*, and that those principles were not to be any further extended.

Court of Appeal.
BAGGALLAY, L.J.
BRETT, L.J.
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Nov. 10, 12, 13, 14, 15.
Jan. 17.

THE CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA *v.* THE NETHERLANDS INDIA STEAM NAVIGATION COMPANY (LIMITED).

Ship and Shipping—Exception in Bill of Lading—Collision between Ships belonging to same Owners—Default of Servants—Excepted Perils—Action of Tort—Measure of Damages—Admiralty Rules—Judicature Act, 1873, *c.* 3, *s.* 25 (9).

Appeal from the Queen's Bench Division, reported 15 Law J. Rep. Q.B. 393.

Action by plaintiffs as owners of goods shipped at Singapore, under a bill of lading, on board the defendants' vessel the Willen Kroon Prins der Netherlander, to be carried to Sourabaya, and lost through a collision on the high seas between that vessel and the Atjeh, another vessel belonging to the defendants. The bill of lading, which was in the English language, and on which the defendants were described by their corporate name, excepted, among other things, (1) collision, (2) accidents, loss, or damage from any act, neglect, or default whatsoever of the pilots, master, or mariners, or other servants of the company in navigating the ship. The two

ships were registered in Holland, in the name of a Dutch company, composed of the same persons as the English company, who are the defendants. The object of such registration was to enable the defendants to trade with those ships to Java, which is a Dutch possession.

The jury, at the trial, found that the Atjeh was mainly at fault in causing the collision, but that the Kroon Prius was also to blame.

The Queen's Bench Division (POLLOCK, B., MANISTY, J., and STEPHEN, J.) held that the defendants were liable, by virtue of their contract, for the whole of the loss.

The defendants appealed.

Benjamin, Q.C., and *Cohen, Q.C.* (with them *Raikes*), for the defendants.

Butt, Q.C., and *Myburgh, Q.C.* (with them *G. Barnes*), for the plaintiffs.

Cur. adv. vult.

January 17.—Their LORDSHIPS were of opinion that the defendants were not liable, as owners of the Kroon Prins, under the bill of lading, which was an English contract, and must be construed accordingly for breach of the contract to carry safely, inasmuch as the parties intended to exclude all collisions, even although attributable to the negligence of those on board the Kroon Prins; that the defendants, as principals of the captain of the Atjeh, were liable for the consequences of his negligence; that the action, viewed as an action of tort, came within section 25, subsection 9, of the Judicature Act, 1873, so that the rules of the Admiralty Division were applicable; that by those rules, where two ships which belong to different owners are to blame, the owner of goods is entitled to recover one-half of the amount of the loss from the owner of one ship, and the other half from the owner of the other ship; so that the defendants, as owners of the Atjeh and the Kroon Prins, would have been liable for the whole amount of the loss, but that, as they were exonerated by the exception in the bill of lading from the share of the loss due to the negligence of those in charge of the Kroon Prins, they were only liable to the plaintiffs for the other half of the loss due to the negligence of the Atjeh. Their lordships gave judgment for the plaintiffs accordingly; no costs of the appeal.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Jan. 19, 20.

Re SPEIGHT. SPEIGHT *v.* GAUNT.

Trustee—Employment of Broker—Negligence—Loss of Trust Funds—Liability of Trustee.

Appeal by the defendant, the sole acting trustee and executor of a will, against a judgment of BACON, V.C., holding the defendant liable to replace a sum of 15,000*l.* to the trust estate, which he had paid to a broker for the purpose of investment, and which had been lost by the default of the broker. The case is fully reported 51 Law J. Rep. Chanc. 715.

Hemming, Q.C., *Davey, Q.C.*, and *J. G. Wood* for the appellant.

Millar, Q.C., and *Stirling* for the respondent.

Their LORDSHIPS reversed the decision of the Vice-Chancellor. They held that the trustee, having selected a broker of good repute, and paid the money over to him on production of a bought note, were exempted from liability if the money were to be lost by the default of the broker.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Jan. 11.

In re TAURINE COMPANY (LIMITED).

Company—Resolution for voluntary Liquidation—Compulsory Order—List of B. Contributories—Commencement of Winding-up—Companies Act, 1862 (25 & 26 *Vict. c.* 89), *s.* 38.

Adjourned summons.

One object of this summons was to place three shareholders, who had transferred their shares, on the list of B. contributories in the winding-up of the company. The transfers were registered on December 24, 1874; and, on the same day, the company passed a resolution for a voluntary winding-up. A compulsory order for winding-up was afterwards made on March 17, 1877.

Hemming, Q.C. (with him *Buckley*), for the summons, relied on *Thomas* v. *The Patent Lionite Company*. 50 Law J. Rep. Chanc. 544, as an authority that, where there was a resolution for voluntary winding-up, and afterwards a compulsory order, the commencement of the winding-up was fixed by the date of the resolution for voluntary liquidation, and that the B. list must be settled by reference to that date.

Marten, Q.C. (with him *Terrell*), *contrà*.

Hemming, Q.C., replied.

BACON, V.C., said that the case cited only decided that a compulsory order did not invalidate the proceedings already taken under a voluntary winding-up, and was no authority for the purpose for which it was cited; and dismissed the summons.

Chancery Division.
BACON, V.C.
Jan. 13.

Re HAYGARTH'S SETTLEMENT TRUSTS.

Succession Duty—Cesser of—Customs and Inland Revenue Act, 1881, *ss.* 27 *and* 41—*Succession Duty Act*, 1853, *ss.* 10 *and* 41.

By a marriage settlement dated March 10, 1855, stock and securities of the value of over 20,000*l.* were vested in trustees upon trust for the wife and husband respectively for life, and, after the death of the survivor, for the issue of the marriage who attained twenty-one. There was issue of the marriage one son who attained twenty-one, and died on November 6, 1881, a bachelor and intestate. The wife was dead; and the father, having taken out letters of administration to the son, claimed to be entitled absolutely to the trust fund. The value of the trust fund, less the value of the life interest therein of the father, was brought into the account of the estate of the son, and probate duty at 3 per cent. paid thereon under the Customs and Inland Revenue Act, 1881, s. 27. The father contended that, under section 41 of the same Act, no further duty was or would become payable, either under the settlement or under the estate of the son. The trustees were, however, informed by the Comptroller of the Inland Revenue that there was a presumptive claim for succession duty on the death of the father under the settlement, which must be provided for before parting with the fund. The trustees, at the request of the father, thereupon paid a sufficient sum to meet this duty into Court under the Trustee Relief Act, 1847, and the father now raised the question on petition for payment to him of this fund.

Marten, Q.C., and *Morshead* for the petitioner.

Frank Pownall for the trustees.

Vaughan Hawkins for the Crown.

BACON, V.C., considered that the working of section 41 was clearly applicable to the present case; and that, 3 per cent. having been paid in compliance with the Act, the succession duty at 1 per cent. imposed by the Succession Duty Act, 1853, was no longer payable.

Chancery Division.
BACON, V.C.
Dec. 12, 13.
Jan. 12, 16.

GOLDSMID *v.* THE GREAT EASTERN RAILWAY COMPANY.

Market—Disturbance—Insufficient Accommodation.

This was an action by the owners and lessees of the Spitalfields Market, to restrain the defendants from establishing a fruit and vegetable market, and from using certain buildings and warehouses for the sale of fruit and vegetables, so as to interfere with the plaintiffs' market.

The defendants, amongst other defences, alleged that the accommodation afforded by the Spitalfields Market was insufficient; and that the owners of the market, being in default in not providing sufficient accommodation, could not maintain an action for disturbance.

Sir Hardinge Giffard, Q.C., Cozens-Hardy, Q.C., and *Micklem* for the plaintiffs.

Hemming, Q.C., A. Charles, Q.C., and *Smart* for the defendants.

F. H. Colt watched the case for the Whitechapel District Board of Works.

Sir Hardinge Giffard in reply.

BACON, V.C., held that the defendants had, in fact, opened a market in direct competition with that of the plaintiffs; that there was no evidence that the accommodation in the plaintiffs' market was insufficient; and that, even if there were, this would not, at law, entitle the defendants to open another market in competition with the plaintiffs' market; and granted an injunction. At the request of the defendants the operation of the injunction was suspended for one month.

Chancery Division.
BACON, V.C.
Jan. 18.

COOPER *v.* METROPOLITAN BOARD OF WORKS.

Compensation under Lands Clauses Act—Mortgagor and Mortgagee—Personal Compensation.

In 1881 the plaintiff carried on business as a tailor at 82 Kentish Town Road. In 1870 he had mortgaged the lease of the house to a mortgagee, who had gone abroad, and who had not since been heard of. The defendants having given notice of their intention to take the plaintiff's premises, under the compulsory powers of the Lands Clauses Consolidation Act, correspondence ensued, in which the plaintiff offered to sell his interest by agreement, claiming, at first, distinct sums for the value of his lease, damages to his trade, expenses of removal, and fixtures. The defendants replied, offering 400*l.* in full discharge of all the items of his claim. The plaintiff replied, offering to accept 400*l.*, provided the leasehold interest was assessed at 150*l.* and 250*l.* for personal compensation, stating that there would be some difficulty in making out the title to the lease. The defendants agreed to this, and the plaintiff gave up possession on June 24, 1881; but as, owing to the absence of the mortgagee, he could not make a title to the lease, the defendants declined to pay him any part of the money. The plaintiff then brought this action for specific performance. After the action was brought, the defendants paid the 400*l.* into Court.

Hemming, Q.C., and *C. H. Turner,* for the plaintiff, contended that on the terms of the agreement the defendants were bound to pay the 250*l.* to the plaintiff forthwith.

Method, for the defendants, contended that the compensation was in the nature of compensation for the value of the goodwill of the business, which passed with the premises; and that, therefore, the 250*l.* as well as the 150*l.* was subject to the mortgage, and a good discharge could only be given by the mortgagee.

Hemming replied.

BACON, V.C., said that the 250*l.* was assessed for personal compensation, and that there was no reason for suggesting that it was subject to the mortgage; and made an order for payment of the 250*l.* within one week, with interest at 5 per cent. from June 24, 1881.

Chancery Division.
FRY, J.
Dec. 9.

WADE *v.* WILSON.

Conveyancing and Real Property Act, 1881, *s.* 25 (2)—*Mortgage—Foreclosure Action—Sale.*

This was a foreclosure action, in which no defendant appeared. The plaintiffs desired an immediate sale.

Decimus Sturges for the plaintiffs.

FRY, J., directed an account, and a sale of so much of the property as should be necessary in order to satisfy what should be found due for principal, interest, and costs.

Chancery Division.
FRY, J.
Dec. 18.

CHARLTON *v.* CHARLTON.

Practice—Taxation—Additional Rules of August 1, 1876 *—Order VI., Rule* 32*—Party.*

This was a motion to review a taxation from a person who had not been brought before the taxing master.

Glasse, Q.C., and *A. C. Terrell* for the motion.

Cookson, Q.C., and *Seward Brice, contrà.*

FRY, J., said the remedy, if any, of the applicant was to have the order for taxation set aside.

Chancery Division.
FRY, J.
Dec. 19.

GREENE *v.* FOSTER.

Mortgage—Foreclosure—Title Deeds.

The plaintiff in this foreclosure action asked an order on a defendant, a mortgagee of the equity of redemption, for delivery up of his security.

Cookson, Q.C., and *Elgood* for the plaintiff.

Fellows for the defendant.

FRY, J., refused to make the order.

Chancery Division.
FRY, J.
Dec. 9, 19.
Jan. 16.

FEARNSIDE *v.* FLINT.

Statute of Limitations, 1874, *s.* 8—*Mortgage.*

This was a claim for a debt secured by a mortgage of copyholds and a concurrent bond. All claim against the land was barred by the lapse of twelve years since the

last payment of interest or acknowledgment; but a letter written within twenty years was set up as an acknowledgment, which, it was argued, kept up the remedy, on the bond.

Everitt, Q.C., and *F. Thompson* for the claimant.

Glasse, Q.C., and *Lawson*, and *Alfred Smith* and *J. Cutler*, for parties to the action.

FRY, J., held that the claim was barred.

Chancery Division.
PEARSON, J. (for KAY, J.)
Jan. 12.
In re HONE'S TRUSTS.

Will—Construction—Gift to Daughter—Direction that if she survived Testator her Share should be subject to the Trusts of her Settlement—Death of Daughter in Lifetime of Testator, leaving Children living at his Death—Wills Act (1 *Vict. c.* 26), *s.* 33.

The testator, by his will, gave his residuary estate to trustees upon trust for his eight children, of whom Mrs. Bathurst was one, in equal shares; and he directed that the share of Mrs. Bathurst, in case she should survive him, should be deemed part of the fund comprised in her marriage settlement, and be subject to the trusts thereof.

Mrs. Bathurst died in the lifetime of the testator, leaving children living at the testator's death, so that by virtue of section 33 of the Wills Act her share did not lapse.

The trustees paid the share into Court; and this was a petition presented by Mrs. Bathurst's husband, who had taken out administration to her, to have the fund paid out to him.

Maclean for the petitioner: The clause in the will must be taken to apply to the case of Mrs. Bathurst's actually surviving the testator, and not to a survival by a fiction of law.

W. Pearson, Q.C., and *Cadman Jones* for the trustees of Mrs. Bathurst's settlement.

PEARSON, J., held that, as no contrary intention appeared from the will, the bequest to Mrs. Bathurst must take effect as if she had survived the testator. If she had survived him the fund must have been brought into settlement; and it would be defeating the object of the Act, and the intention of the testator, to hold that it ought to be paid to her representative. It must, therefore, be paid to the trustees of the settlement.

Chancery Division.
CHITTY, J.
Jan. 12.
BIRCH *v.* MATHER.

Practice — Discovery — Patent Action — Patent Law Amendment Act, 1852 (15 *&* 16 *Vict. c.* 83), *s.* 41.

The ordinary rules of discovery apply to patent actions, notwithstanding the provisions of the Patent Law Amendment Act, 1852, s. 41, for delivery of particulars.

Therefore, where, in an action for the infringement of a patent, the defendant had delivered particulars of objections, including a statement that the inventions claimed by the plaintiff had, prior to the date of the letters patent, been used at places named, and the plaintiff desired to obtain the names and addresses of the persons using at those places the inventions,

HELD that, although the information sought for from the defendant had reference to the particulars delivered by him, yet the plaintiff was not bound to apply for further particulars, but could apply for leave to administer interrogatories. Held also—following *Finnegan v. James*, 44 Law J. Rep. Chanc. 185; L. R. 19, Eq. 72; and *Crossley v. Toney*, L. R. 2 Chanc. Div. 533—that the plaintiff was, notwithstanding the language of the Patent Law Amendment Act, 1852, s. 41, entitled to the information asked for.

Clement Higgin and *Chadwyck Healey* for the parties.

Chancery Division.
PEARSON, J.
Jan. 18.
WEBBER *v.* WEDGWOOD.

Practice—Amendment of Pleadings—Costs of Action sole Question to be determined.

This was an action to restrain the defendant from building in such a way as to interfere with the ancient lights of the plaintiff. An injunction was granted the day after issuing the writ, and the defendant did not appear. The defendant then completed his building within its old height. The plaintiff delivered a statement of claim. The statement of defence did not deny the plaintiff's title to twenty years' access of light. The plaintiff set the action down for trial, and it came into the paper in November last, but stood over to enable the parties to file affidavits. On December 20 the defendant became acquainted with facts which induced him to believe that the plaintiff's lights were not ancient. Accordingly he applied, by summons, for leave to amend his statement of defence by alleging that the lights were not ancient; and, the summons being refused, the defendant moved in Court to reverse the order made in chambers.

Gent for the motion: Although, in point of form, the question of costs alone remains to be decided, yet, substantially, this involves the question whether or not the plaintiff had any right of action. The proposed amendment is, therefore, not material; and the effect of not allowing it might be to deprive the defendant of costs, although he has been all along in the right. He referred to *Laird v. Briggs*, L. R. 19 Chanc. Div. 22.

Graham Hastings, Q.C., and *Charles Browne*, for the plaintiff, were not called upon.

PEARSON, J., said that the only question remaining to be decided was as to the costs of the action, and not as to the rights of the parties. The proposed amendment would raise an entirely new issue, and to allow it would be, in effect, to allow an entirely new action to be brought for the sole purpose of determining how the costs of this action were to be borne. He should only be encouraging litigation if he were to do this. He accordingly refused the motion, with costs.

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Bankruptcy—Practice—Adjudication made by Court of Appeal after Refusal by Chief Judge—Date of Adjudication.

In this case Mr. Registrar Brougham, sitting as CHIEF JUDGE in Bankruptcy, had refused to adjudicate the debtor a bankrupt. On the appeal of the petitioning creditor the Court of Appeal made the adjudication; and the question arose whether it ought to be dated as of the day on which the registrar ought to have made it, or as of the day of the decision of the Court of Appeal.

Winslow, Q.C., and *J. E. Linklater* for the petitioning creditor.

Cooper Willis, Q.C., and *Brough* for the debtor.

Their LORDSHIPS held that the adjudication must be dated on the day of the decision of the Court of Appeal.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Jan. 22.

In re FRANK MILLS MINING COMPANY.

Cost-book Mine—Relinquishment of Shares—Mode of ascertaining Contribution payable by relinquishing Shareholder.

The appellant, the holder of 110 shares in a cost-book mine in Devon, gave notice on November 15, 1879, to the purser of the company of his desire to relinquish them, and asked him for an account of his liabilities. This account ought to have been made out on November 30, but none was then made up or sent to him. On February 26, 1880, a petition was presented in the Stannaries Court for winding up the company, and on March 6 a winding-up order was made.

The liquidator made a call on the continuing shareholders, out of which all the debts were paid. He made out an account of the assets and liabilities of the company, deducting from the assets a considerable part of the money due for arrears on calls, and calculating the plant of the company at the breaking-up value.

In calculating the amount of liabilities payable to the appellant, the liquidator divided the liabilities rated between him and the holder of 601 other shares, omiting 678 shares held by insolvent persons.

It appeared from the company's books that in all former cases of relinquishing, while the company was a going concern, the arrears of calls had been treated as good debts, and the holders, whether solvent or not, treated as solvent.

The appellant was ordered, by the vice-warden of the Stannaries, to pay the sum claimed by the liquidator upon the new mode of valuation.

Higgins, Q.C., and *Ingle Joyce* for the appellant.

Whitehorne, Q.C., and *N. Lawrence* for the liquidator.

Their LORDSHIPS held that the former practice of the company of making its account on the footing of the solvency of all the shareholders, and of the arrears of calls being good debts, did not establish a rule binding on the company always to take its account on that footing. The contribution due from the appellant must be

ascertained, having regard to the solvency of the continuing shareholders at the time of his relinquishing (November 30, 1879), and the value of the assets at that time—the plant to be valued as in a going concern.

Court of Appeal.
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Jan. 22.
} MANSEL *v.* NORTON.

Lease—Agreement by Lessor to pay Tenant for unexhausted Improvements at the Expiration of Lease—Devisee of Lessor—Covenant running with the Land.

This was an appeal from a decision of BACON, V.C.

The plaintiff was tenant for life, under the will of a testator, of a farm in Surrey. The testator had leased the farm, under a parol contract to one Wood, for a term; one of the stipulations being that the lessor should, on the expiration of the lease, pay the lessee for the tenant's property on the farm, to be ascertained by valuation, according to the custom of the county.

On the expiration of the lease, Wood gave up the farm; and, as an ingoing tenant could not be found, the plaintiff entered into possession of the farm as the tenant for life, and had to pay Wood 638*l.* 6*s.* 10*d.*—the amount of the valuation of the tenant's property according to the custom of the county.

This action was then brought to determine the question whether the plaintiff was entitled to be paid the valuation out of the testator's estate.

The Vice-Chancellor decided in favour of the plaintiff.

The defendants, the trustees of the will, appealed.

Godefroi for the appellants.

Higgins, Q.C., and *Levett* for the respondents.

Their LORDSHIPS allowed the appeal; being of opinion that the obligation was in the nature of a covenant running with the land, and that the valuation was consequently payable by the landlord for the time being.

HIGH COURT OF JUSTICE.

Chancery Division.
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Jan. 24.
} STANLEY *v.* GRUNDY.

Mortgage—Attornment by Mortgagor—Mortgagee in Possession—Foreclosure.

This was a foreclosure action. In 1869 a mortgage of freehold property was transferred to J. Kershaw by a deed to which the mortgagor was a party, and the mortgagor thereby attorned tenant to J. Kershaw at a yearly rent equal to the amount of the interest. In 1881 this mortgage was transferred to the plaintiffs. The defendant was a second mortgagee of the property; and he contended that, having regard to the attornment clause, the plaintiffs must be treated as mortgagees in possession.

Millar, Q.C., and *A. Bailey* for the plaintiffs.

Ingle Joyce for the defendant.

BACON, V.C., said that, in the absence of any decision to that effect, he should not be the first judge to hold that one effect of this attornment clause was to turn the mortgagee into a mortgagee in possession; and made an ordinary foreclosure judgment.

Chancery Division.
FRY, J.
Jan. 11, 16.
} GUTHRIE *v.* WALROND.

Will—Construction—Estate and Effects—'Choses in Action'—Onerous Property.

This was an action to administer the estate of a testator who had given 'all his estate and effects in the island of Mauritius' to his son W. M. Guthrie. Two questions arose on the construction of that clause: one, whether the gift included debts from persons domiciled in Mauritius, or whether those debts were property in the country where the testator was domiciled at the time of the death; the other, whether the devisees could repudiate onerous leaseholds, and take the rest of the property in Mauritius.

Glasse, Q.C., and *Blakesley* for W. M. Guthrie.

Cookson, Q.C., and *Onslow* for the other children.

Cozens-Hardy, Q.C., and *Richmond* for trustees.

FRY, J., held that the gift included debts from persons domiciled in Mauritius, and that the donee must take or repudiate the whole gift.

Chancery Division.
FRY, J.
Jan. 19.
} *In re* BUCKLEY'S SETTLEMENT.

Lord Cranworth's Act (23 & 24 *Vict. c.* 145), *s.* 26—*Infant—Income—Defeasance.*

Personal property was left on trust for an infant with a gift over in case he should not attain twenty-one. The infant died under twenty-one, and the trustees of the fund paid into Court accumulations of income in their hands. The persons entitled under the gift over petitioned for the payment of the accumulations to them, on the ground that they were entitled by virtue of section 26 of Lord Cranworth's Act.

Hull for the petitioners.

Mickleham, contrà.

FRY, J., held that the section does not apply to a defeasable interest, but only to absolute and contingent interest of infants, and the fund in Court belonged to the representative of the infant.

Chancery Division.
FRY, J.
Jan. 19, 20.
} SMITH, *Re.* GREEN *v.* SMITH.

Bankruptcy Act, 1869, *ss.* 39, 47, 54—*Close of Bankruptcy—Set-off—Administration.*

R. Smith, the testator in this action, was adjudicated bankrupt in 1877. Messrs. Bell, Nott, & Co. proved in the bankruptcy for a sum of 2,193*l.*, and received dividends. In November, 1879, they entered into an arrangement with the bankrupt to recommence trading with him, and under that arrangement they became his debtors to the extent of 238*l.* In December, 1880, an order was made closing the bankruptcy. The bankrupt never obtained his discharge. In June, 1881, R. Smith died.

This was a summons (Bell, Nott, & Co. submitting to the jurisdiction) by the executrix for an order on Bell, Nott, & Co. for payment of the 238*l.*

Cooper Willis, Q.C., and *W. W. Cooper* for the summons.

Yate Lee, for Messrs. Bell, Nott, & Co., contended:

(1) That the balance of the debt proved in the bankruptcy could be set off against the amount claimed. (2) That the amount, if any, recoverable belonged to the estate in bankruptcy, and could only be sued for by the registrar as trustee after the close. (3) That under section 39 of the Bankruptcy Act, 1869, which was applicable to the administration of an insolvent estate in Chancery, there was a set-off; and he asked, if necessary, for an inquiry whether the estate, being administered, was insolvent.

Byrne for the trustee in bankruptcy.

FRY, J., made an order on Messrs. Bell, Nott, & Co. to pay the 238*l.* to a separate account, giving liberty to them to apply for a set-off under section 39 of the Bankruptcy Act, in case it should appear that the estate, being administered in Chancery, were insolvent.

Chancery Division. FRY, J. Jan. 22. } *In re* THE DEVALA PROVIDENT GOLD MINING COMPANY (LIMITED).

Evidence—Admission—Agent—Company—Director.

A question arose on this summons whether a statement made by the chairman of directors at a meeting of the above company could be used as an admission by the company.

Swinfen Eady for the applicant.

Cookson, Q.C., and *W. R. Kennedy* for the company.

FRY, J., held the company were not bound by the statement.

Chancery Division. FRY, J. Jan. 23. } *In re* BODDINGTON. BODDINGTON *v.* BODDINGTON.

Will—Construction—Nullity of Marriage.

The plaintiff married the testator in the action in August, 1879, and in April, 1881, obtained a decree declaring the marriage null, on the ground of the impotency of the husband. The testator died in July, 1881, having made his will dated October, 1879, by which he directed his trustees to hold his residue on trust to pay his 'wife, Emily Caroline Boddington,' a legacy of 200*l.*; 'and, in addition thereto, to pay to my said wife, so long as she shall continue my widow and unmarried,' an annuity of 300*l.*, 'or otherwise in lieu and in substitution of the said annuity, at the option of my said wife, if she shall prefer it.' He gave her a capital sum of 2,000*l.*

This was an action to determine whether the plaintiff was entitled to the legacy and annuity.

Cozens-Hardy, Q.C., and *Finch* for the plaintiff.

Horace Davey, Q.C., and *Langworthy* for the defendants.

FRY, J., held the plaintiff entitled to the legacy, but not to the annuity, or the option to take the 2,000*l.* in lieu.

Chancery Division. PEARSON J. (for KAY, J.) Jan. 15, 16. } PONSONBY *v.* HARTLEY.

Practice—Production of Documents—Plaintiff's Title, Documents likely to support.

The plaintiff in this action claimed an injunction to restrain the defendants from interfering with his working certain minerals under an estate called Howbank, of which the defendants were in possession of the surface. This estate was formerly copyhold of a manor in the county of Cumberland; and, by a deed dated in 1779, it was enfranchised by the then lord of the manor, who, however, reserved to himself the mines and minerals thereunder.

The plaintiff was the present lord of the manor; and the defendants, by devolution of title, were the present owners of the surface of the estate.

The plaintiff, having commenced to work his mines, was interrupted by the defendants, who treated him as a trespasser, whereupon the plaintiff brought his action. Statements of claim and defence were put in, and the defendants filed an affidavit of documents; and the plaintiff then took out the present summons, requiring the defendants to produce the documents mentioned in their affidavit. The defendants objected to produce the deeds of enfranchisement, as well as certain prior deeds relating to the property, on the ground that they related only to their own title, and did not tend in any way to support that of the plaintiff. They also contended that the action was one to enforce a legal title to land in the possession of the defendants, and that it therefore came within Order XIX., Rule 15, or, at all events, within the general principle that a plaintiff in an action of ejectment must recover by the strength of his own title, and is not entitled to discovery of title deeds from a defendant in possession of the land.

Robinson, Q.C., and *W. Druce* for the plaintiff.

W. Pearson, Q.C., and *W. P. Beale* for the defendants.

PEARSON, J., held that the rule in question only applied to cases where two persons claim the fee simple in the same land, and, therefore, their titles are distinctly adverse the one to the other; and that it did not apply to such a case as the present, where the plaintiff claimed the minerals, and the defendants' right to the possession of the surface was not disputed. He considered that the question in this case was really one of boundaries; and there was so strong a probability that the deeds in question would assist the plaintiff that he should disregard the defendants' affidavit and order inspection, confining it, however, to the names of the parties, the parcels, and any plans which the deeds might contain.

Chancery Division. PEARSON, J. (for KAY, J.) Jan. 16. } *In re* BIRMINGHAM BREWERY, MALTING, AND DISTILLERY COMPANY.

Company—Winding up—Surety for Liquidation—Right to have Accounts reopened—Practice.

In 1881 an order was made for the voluntary winding up of the company under the supervision of the Court, and one, Hooper, was appointed liquidator and ordered to give security. The Guarantee Society became his surety for 3,000*l.*, and, for that purpose, executed a bond, which provided that the chief clerk's certificate should be conclusive evidence, as between all parties, that the bond had been forfeited to the amount stated in the certificate. On the bankruptcy of Hooper a fresh liquidator was appointed in his place. In February, 1882, the accounts were carried in and vouched, but the Guarantee Society had no notice of the proceedings. The result of the accounts showed a probable deficit of 4,500*l.* On the date fixed for the final passing of the accounts, the

society attended by their solicitor, and asked to have the accounts reopened. On this being refused, the society took out a summons to have the accounts reopened, and for liberty to attend the reopening and repassing.

The summons was adjourned into Court.

Rigby, Q.C., and *Stock* for the society.

Hastings, Q.C., and *G. Henderson* for the liquidator.

PEARSON, J., having made inquiries of the chief clerks of Chitty, J., Fry, J., and Kay, J., as to the practice in chambers, stated that he was informed by them that it was not the practice to give notice to the surety of the taking of the accounts; but that, if the surety became aware of the taking of the accounts, and applied for leave to attend, leave would be granted to attend at his own expense; and that no instance was known of the Court having reopened an account upon the application of the surety. That being the practice, he should only allow the society to reopen the accounts on the terms of their paying into Court the whole of the 3,000*l.* for which they were liable, together with 100*l.* to provide for the costs of such reopening, and of undertaking to pay interest on the amount to be found due from them, and of paying the costs of the application.

Chancery Division. CHITTY, J. Jan. 15. } *In re* BASHAM. HANNAY *v.* BASHAM.

Practice—Costs—Administration—Bankrupt Executrix—Default of Executrix.

A bankrupt executrix, who had failed to account for moneys received by her as executrix before her bankruptcy, but after the commencement of an action to administer her testator's estate, held not to be entitled to her costs in that action until she had made good her default.

Lewis v. *Trask* (21 L.R. Chanc. Div. 862) followed.

Clare v. *Clare* (51 Law J. Rep. Chanc. 553; 21 L.R. Chanc. Div. 865) not followed.

Romer, Q.C., and *Rowden* for the plaintiff.

Ince, Q.C., and *Simmonds* for the defendant.

Grosvenor Woods, Levett, and *M'Swinney* for other parties.

Chancery Division. CHITTY, J. Jan. 18. } DE MONTBRUN *v.* HIRSCH.

Foreign Judgment—Property outside the foreign Jurisdiction—Comity of Nations—Insanity of Defendant—'Curator bonis.'

A foreign judgment, as such, cannot be enforced in an English Court, but can only be sued upon as a new cause of action. The comity of nations does not require, or enable, the English Court to restrain a defendant from dealing with a fund in this country which is part of his general property, and on which the plaintiff has no lien or charge. A *curator bonis* appointed by the foreign Court of a lunatic defendant does not represent the lunatic's estate for the purpose of enabling the English Court to make an order restrictive of dealings with such a fund.

E. Cutler appeared for the plaintiff in this action.

Pollard for the defendant.

Chancery Division. PEARSON, J. Jan. 20. } HACK *v.* THE LONDON PROVIDENT BUILDING SOCIETY.

Building Society—Reference to Arbitration—Jurisdiction of Court—Building Societies Act, 1874 (34 & 35 *Vict. c.* 42), *s.* 34.

The facts in this case were very similar to those in *Wright* v. *The Monarch Investment Building Society*, 46 Law J. Rep. Chanc. 649; L. R. 5 Chanc. Div. 726. The plaintiff was a member of the defendant society (which was registered under the Act of 1874), and had borrowed money from the society on mortgage of certain lands. The society sold the lands under the power of sale in their mortgage, and the plaintiff brought this action for an account of the proceeds of sale, seeking also to charge the defendants with the difference between the value of the mortgaged property and the amount realised by the sale. The rules of the society contained the usual clause providing that all matters in dispute between the society and any of its members should be referred to the arbitration of the registrar of friendly societies, and the defendants, accordingly, applied to the Court that the matters in question in this action should be so referred.

William King, for the defendants, relied on the case above cited.

Durham for the plaintiff: That case was decided without any reference being made to the governing case of *Morrison* v. *Glover*, 4 Exch. Rep. 430; 19 Law J. Rep. Exch. 20, and has, moreover, been overruled by *Mulkern* v. *Lord*, 48 Law J. Rep. Chanc. 745; L.R. 4 App. Cas. 1882, which followed *Morrison* v. *Glover*. The two last-named cases established that an arbitration clause like the present applies only to disputes which can arise between the society and the members in their character of members.

PEARSON, J., said that the present case was governed by the decision in *Wright* v. *The Monarch, &c., Society*. That decision was under the Act of 1867, whereas the two other cases mentioned were decided under the earlier Acts. It seemed to him that the Act of 1867 had been purposely passed in view of the earlier cases, and in order to confer larger powers on the registrar as arbitrator. He therefore granted the application, but directed that the costs should be in the discretion of the registrar.

Probate, Divorce, and Admiralty Division. Jan. 15, 23. } THE UNITED SERVICE. COLE *v.* GREAT YARMOUTH STEAM TUG COMPANY (LIM.).

Towage—Negligence—Proviso in Contract.

This was an action brought by the owners of the smack Red Rose against the owners of the tug United Service for breach of contract, in consequence of which the Red Rose had been lost.

The two breaches were, first, of an implied contract that the tug would not tow more vessels than she could manage; secondly, of a direct contract not to tow more than six vessels. The defendants relied on a notice that they would not be answerable for the negligence of their servants; and denied that the loss was caused by a breach of contract.

Butt, Q.C., and *Phillimore* were for the plaintiffs.

Webster, Q.C., C. Hall, Q.C., and *Witt* for the defendants.

SIR R. J. PHILLIMORE held that the defendants were exonerated from liability by the notice given by them to persons who employed their tugs.

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COURT OF APPEAL.

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Ex parte RITSO. *In re* RITSO.

Bankruptcy — Practice — Rehearing — Time — Debtor's Summons—Judgment Debt—Statement of Consideration—Bankruptcy Act 1869, *s.* 71—*Rules of* 1870, *Rule* 143.

In this case a bankruptcy petition, founded on a judgment debt, had been presented against the debtor, the act of bankruptcy being the failure of the debtor to comply with a debtor's summons. On October 26, Mr. Registrar Hazlitt, sitting as CHIEF JUDGE, had dismissed the petition on the ground that no act of bankruptcy was proved, because the consideration for the judgment was not truly stated in the debtor's summons. On November 16 the petitioning creditor applied *ex parte* for a rehearing, and November 30 was fixed for the rehearing. Eventually the rehearing took place on December 9, and the debtor was then adjudicated a bankrupt.

Against this decision he appealed.

For the appellant it was contended that the rehearing was too late, as it was granted after the time limited for appealing from the original order; and also that the consideration for the judgment was not truly stated in the summons.

Winslow, Q.C., and *Doria* for the appellant.

Herbert Reed for the respondent.

Their LORDSHIPS held, as to the latter point, that, where a debtor's summons was founded on a judgment debt, it was not necessary to state the consideration at all, and the fact of its being wrongly stated did not invalidate the summons. On the other point, they said that no time within which a rehearing must take place was fixed by the Act or rules; and though, as a general rule, the Court would be guided by the analogy of the time fixed for appealing from an order, yet no hard and fast rule would be laid down as to the time for granting a rehearing. Here the delay had been very short. The Court of Appeal, moreover, had power, under the Judicature Acts, to extend the time for appealing on special grounds. Here the registrar had evidently wished to put right his own blunder, and, that was a discretion which judges might be trusted to exercise without fear of their abusing it; and, the judge having exercised his discretion, the Court of Appeal would not interfere unless there had been an evident miscarriage, which was not the case here. The appeal, therefore, was dismissed.

Court of Appeal.
JESSEL, M.R.
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BOWEN, L.J.
Jan. 25.

Ex parte HUDSON. *In re* WALTON.

Bankruptcy—Composition—Small Amount of—Security for—Abuse of Process of Court—Bankruptcy Act, 1869, *s.* 126—*Rules of* 1870, *Rule* 295.

The debtor in this case had filed a liquidation petition, his debts amounting to 504*l.*, and his assets to 5*l.* Resolutions had been passed by the creditors for a composition of 1*s.* in the pound, to be secured by a third person.

Mr. Registrar Pepys, sitting as CHIEF JUDGE, registered the resolutions in spite of the opposition of a creditor, who objected to the registration on the ground that the proceedings were an abuse of the process of the Court.

The creditor appealed.

Burleigh Muir for the appellant.

J. E. Bankes, for the debtor, was not called upon.

Their LORDSHIPS held that the question in all these cases was whether the arrangement was *bonâ fide* or made in the interest of the debtor. Considering that there were no assets, 1*s.* in the pound, with security, was not an unreasonable composition. The fact of a composition being secured made a great difference with reference to the question whether registration should be allowed or not.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Jan. 25.

Re GALE. BLAKE *v.* GALE.

Executors—'Devastavit'—Statute of Limitations (21 *Jac. I. c.* 16), *s.* 3.

William Gale died in 1859, having mortgaged certain real estate to the plaintiffs. The parties entitled, under the will of William Gale, to the real and personal estate, arranged for the distribution of his estate, and his three executors distributed the personal estate in 1860, having, as they alleged, first obtained the consent of the mortgagees, who agreed to look to the real estate for their security. This was denied by the mortgagees. Interest on the mortgage was paid by the persons entitled to the real estate. The real estate having proved insufficient for payment of the mortgage money, the plaintiffs brought this action asking to be paid out of the estate of the testator, and seeking to charge the executors to the extent of the personal estate distributed by them on the ground of *devastavit*. The action was brought in March, 1882; and, on behalf of the executors, the Statute of Limitations was pleaded as a bar to the claim on the *devastavit*.

Marten, Q.C., and *Freeman* for the plaintiffs.

Hemming, Q.C., and *B. B. Rogers* for two surviving executors.

Begg for the representatives of a deceased executor.

Marten in reply.

BACON, V.C., held that the *devastavit* constituted a simple contract debt, and that this part of the claim was, therefore, barred by the statute notwithstanding payment of interest on the mortgage; and gave judgment for foreclosure and administration of the estate of William Gale, the testator.

Chancery Division.
BACON, V.C.
Feb. 3.

Re THE MILFORD DOCKS COMPANY.

Winding-up—Unpaid Vendor—Award—Creditor—Companies Act, 1862, *s.* 82.

This was a petition to wind up the company, by owners of the equity of redemption, claiming as unpaid vendors of land taken by the company under their compulsory powers.

The amount of the purchase and compensation money to be paid by the company had been ascertained and fixed by an award of March 17, 1882, at 6,000*l.* The petitioners alleged that further sums of 1,612*l.* for interest, and 2,000*l.* 'in respect of rent and other outgoings, and of certain disbursements, costs, and expenses,' were also owing to them. There was some dispute about the title, which had not at the date of the presentation of the petition been accepted by the company.

Horton Smith, Q.C., and *Oswald* for the petitioners.

Marten, Q.C., and *Levett* for the company.

Hemming, Q.C., *Millar, Q.C.*, *Northmore Lawrence*, *Latham*, *E. Ford*, *Seward Brice*, *A. R. Kirby*, *G. Henderson*, and *Swinfen Eady* for creditors and shareholders.

BACON, V.C., considered that, though the petitioners were undoubtedly unpaid vendors, they were not 'creditors' in such a sense as to be enabled to present a winding-up petition, as, until they had made out a title and tendered a conveyance, their debt could not be said to exist; and their case not being within the provisions of the Companies Act, 1862, s. 82, the petition must be dismissed, with costs.

Chancery Division.
FRY, J.
Jan. 26.

In re BIRT. BIRT *v.* BURT.

Solicitor—Administrator—Retainer.

This was an action for the administration of an intestate's estate. The administrator was a solicitor, member of the firm who were the solicitors of the person who had the conduct of the cause.

W. Lucas was appointed receiver on his giving security. The administrator ordered certain furniture to be sold. After the order appointing the receiver, before security was given, the administrator obtained payment of the purchase-money of the furniture, and claimed to retain it towards satisfying a debt due to him from the intestate.

This was a summons to compel him to pay that purchase-money.

Cookson, Q.C., and *Ingle Joyce* for the summons.

Glasse, Q.C., and *Lloyd, contrà.*

FRY, J., held that the administrator had a duty, as one of the firm of solicitors of the party conducting the cause, to see that the money did not come into the hands of a person who had a right of retainer; and could not therefore, under the circumstances, be allowed to retain the money.

Chancery Division.
FRY, J.
Jan. 25, 26.

In re COWDELL.

Practice—Attorneys Act, 1843, *s.* 38—*Costs—Taxation—Party and Party—Third Party.*

The Clay Lane local board were liable, under an award, to pay the costs of the award as between party and party. They obtained an order of course, under the third party clause, to tax the bill of costs of solicitor of the other party in reference to the award.

D. Jones, for the solicitor, moved to set aside the order for taxation.

Farwell, contrà.

FRY, J., held section 38 of the Attorneys Act did not apply in favour of a person liable to pay party and party costs; and set aside the order for taxation.

Chancery Division.
FRY, J.
Feb. 1.

HICKSON *v.* DARLOW.

Bills of Sale Act 1882, *s.* 8.

This was a motion to restrain the sale of furniture under a bill of sale. The instrument was executed on

October 5, 1882. It had not been registered. It was contended, on the part of the plaintiff, that section 8 of the Bills of Sale Act, 1882, was retrospective, so as to render the bill of sale in question void because it was not registered within seven days from the date of execution.

Nalder for the plaintiff.

Melville for the defendant.

FRY, J., held that, as between the parties, the instrument was valid.

Chancery Division. FRY, J. Jan. 30. Feb. 5. } FRANCE *v.* CLARKE.

Company—Shares—Blank Transfer—Mortgage—Power of Sale.

The plaintiff had executed a transfer of shares in blank as to the name of the transferee, and handed the transfer and certificate of the shares to one Clarke as security for a loan. The articles of the company did not require transfers to be made by deed. Clarke handed the transfer and certificate to a third person for value, who filled in his own name as transferee. Clarke died insolvent, and the holder of the transfer applied to the company to get registered as owner of the shares; but, before he could be registered, he and the company had notice that the plaintiff claimed the right to redeem he sought by this action.

Cozens-Hardy, Q.C., and *Kirby* for the plaintiff.

Glasse, Q.C., and *Popham* for the transferee.

Lake for the representatives of Clarke.

FRY, J., held that the pledge did not convey a power of sale; and the plaintiff was entitled to redeem.

Chancery Division. PEARSON, J. (for KAY, J.) Jan. 24. } *In re* HALL. HALL *v.* HALL.

Administration—Business of Intestate carried on by Administrator—Right of Creditors of Intestate to Priority over Creditors of Administrator.

Hall, who during his lifetime had carried on the business of a brewer and wine and spirit merchant, in November, 1876, died intestate, leaving debts to a considerable amount. His widow and administratrix carried on the business for six months, and then handed it over to the receiver who had been appointed in this action, which had been commenced for the administration of the intestate's estate.

On further consideration of the action, a claim was made by creditors (who had supplied goods to the widow for the purpose of carrying on the business) to be paid out of the intestate's estate in priority to the creditors of the intestate.

On behalf of Mrs. Hall, it was contended that she had virtually carried on the business in the position of a receiver, and was entitled to be indemnified out of the estate.

It appeared that, at the time of the intestate's death, his estate was solvent; but that, since his death, the business had gone off, and there were not now sufficient assets to pay his creditors in full.

Sir Arthur Watson for the plaintiff.

Graham Hastings, Q.C., and *W. C. Druce* for Mrs. Hall.

W. Pearson, Q.C., and *B. B. Rogers* for the creditors claiming priority.

Rigby, Q.C., and *J. G. Wood* for the creditors of the intestate.

PEARSON, J., held that the widow alone was liable for the debts she had contracted; and that, under the circumstances, the whole of the assets must be distributed among the creditors of the intestate.

Chancery Division. CHITTY, J. Jan. 19. } CARUNCHO *v.* HIGHMOOR.

Practice — Costs — Injunction — Undertaking—Infringement of Trade-mark—Innocent Defendant—Motion after Undertaking offered by Defendant.

The plaintiffs, cigar merchants, moved for an interim injunction to restrain the defendant, a chemist, from selling cigars in boxes bearing labels in imitation of that used by the plaintiffs, and registered by them as their trade-mark. The defendant had bought the boxes innocently, and the first intimation to him of the spuriousness of the labels was the service of the writ in the action. Immediately after the service of the writ the defendant withdrew the cigars from sale, and, through his solicitor, offered an undertaking in the terms of the indorsement on the writ. The plaintiffs had, notwithstanding, served the defendant with notice of the present motion.

Ince, Q.C., and *Beddall* for the plaintiffs.

George Henderson, for the defendant, asked that the plaintiffs be ordered to pay the costs of the motion.

CHITTY, J., said that the motion was brought in the face of an undertaking, which was as good as an injunction. The plaintiffs were therefore wrong in bringing the motion. They were, however, entitled to some costs, *e.g.* the costs of the writ. Taking this into account, he should order them to pay to the defendant a sum of five guineas as costs.

Chancery Division. CHITTY, J. Jan. 20. } *In re* THE FINANCIAL CORPORATION (LIMITED).

Limited Company — Advertisement of Dissolution — Petition to restore to Register—Companies Act, 1880 (43 *Vict. c.* 19), *s.* 7, *subs.* 5.

A company in liquidation is a company 'in operation' within the Companies Act, 1880 (43 Vict. c. 19), s. 7, subs. 5.

Whinney for the company.

Stirling for the Board of Trade.

Chancery Division. CHITTY, J. Jan. 27. } *In re* LEMANN'S TRUSTS.

Appointment of new Trustees—Personal Incapacity—Trustee Act, 1850, *s.* 32.

The Court has power under section 32 of the Trustee Act, 1850, to appoint a new trustee in place of a trustee who, by age and infirmity, is incapable of acting as trustee. *In re Bignold's Trusts*, 41 Law J. Rep. Chanc. 235; L.R. 7 Chanc. App. 223, referred to.

Ware, Maidlow, and *S. B. L. Druce* for the parties.

Chancery Division.
CHITTY, J.
Feb. 3.
In re MOATE'S TRUST.

Practice — Petition — Adjournment into Chambers — Trustee Relief Act, 1847 (10 & 11 *Vict. c.* 96), *s.* 2—*Masters Abolition Act*, 1852 (15 & 16 *Vict. c.* 80), *ss.* 26, 27—*Consolidated Order XXXV., Rule* 1.

A petition having been presented by parties interested in a fund paid into Court, under the Trustee Relief Act, for an inquiry as to the persons entitled, and for payment out to the persons so found to be entitled, an order was made directing the inquiry, and adjourning the further hearing of the petition into chambers.

HELD that the proceedings having, under section 2 of the Trustee Relief Act, been properly commenced by petition, the Court had jurisdiction, under section 27 of the Masters Abolition Act, 1852 (15 & 16 Vict. c. 80), to adjourn the petition into chambers.

Frodsham v. *Frodsham*, 50 Law J. Rep. Chanc. 233; L. R. 15 Chanc. Div. 317, explained.

Bethell for the parties.

Chancery Division.
PEARSON, J.
Jan. 25.
In re J. P. L. JONES (AN INFANT).

Infant—Jurisdiction—Action of Ejectment by Guardian of Infant Tenant in Tail—Charge of Costs on Infant's Property.

The infant was tenant in tail in possession of certain settled estates, and the applicant had been appointed his guardian. The settlor had been owner in fee simple of land adjoining the settled estates, and, as it was alleged, had possessed himself of, and dealt with, part of the settled estate as though he were owner in fee of it. The applicant had obtained the sanction of the Court to bring an action of ejectment, in respect of the land so appropriated, against the person deriving title from the settlor. This was an application for authority to raise a sum of 500*l.*, in order to carry on such action, by an equitable mortgage of the infant's estate, and to pay the same to the applicant's solicitors in the action, they undertaking to keep an account thereof. It was stated that the infant would attain twenty-one in April, 1883.

J. Henderson, for the applicant, submitted that, the action being for the protection of the infant's estate, the costs were necessaries, and relied on *Pritchard* v. *Roberts*, 43 Law J. Rep. Chanc. 129; L.R. 17 Eq. 223, as an authority that the Court had power to grant the application.

PEARSON, J., made the order.

Bankruptcy.
BACON, C.J.
Feb. 5.
Re WRIGHT. *Ex parte* WILLEY.

Composition—Power of Debtor to examine Creditor—Bankruptcy Act, 1869, *ss.* 96, 126; *Rules*, 1870, 171.

Appeal from the Bradford County Court.

In August, 1882, Messrs. M. & A. W. Wright presented a petition for liquidation.

On October 4 the creditors, at the first meeting, passed resolutions accepting a composition of 6*s.* in the pound, payable by six instalments, extending over a period of two years, the last three instalments being secured to the satisfaction of the committee. A trustee was also appointed to receive and distribute the composition.

The resolutions were subsequently confirmed and duly registered.

On October 27 the appellant, J. H. Willey, tendered a proof under the composition for 3,400*l.*, as the holder for value of certain bills of exchange.

On November 21 the debtors applied, under section 96 of the Bankruptcy Act, 1869, to have the appellant summoned for examination. The application was granted; but, when the appellant came before the registrar, he declined to be sworn, on the ground that the Court had no jurisdiction. The registrar referred the matter to the judge, who, on December 12, made an order declaring J. H. Willey to have been guilty of contempt in refusing to be sworn and examined in pursuance of the summons issued for that purpose. From this order J. H. Willey appealed.

West, for the appellant, argued that in a case of simple composition, as this was, the Court had not the matter before it, and, therefore, had no jurisdiction; and that section 96 and Rule 171 of Bankruptcy Rules, 1870, only applied after an adjudication, or its equivalent the appointment of a trustee under a liquidation.

Winslow, Q.C., and *F. Knight* for the debtors.

West replied.

The CHIEF JUDGE said there were several varieties of bankruptcy, but the proceedings in each were regulated by the Bankruptcy Act, 1869; that when a debtor presented a petition of liquidation by arrangement or composition he thereupon committed an act of bankruptcy, and submitted to the bankruptcy jurisdiction. The creditors here had accepted a composition; but the debtor, nevertheless, wished to examine a creditor who had tendered a proof for a large amount. This was a matter which was of vital importance to all who were concerned in this bankruptcy, for bankruptcy it was, notwithstanding the registration of the composition resolutions. The objection to be sworn was unreasonable; and the appeal must be dismissed, with costs. But, as the point was a new one, his lordship directed the order not to be executed till the appellant had had time to appeal.

Probate, Divorce, and Admiralty Division.
Feb. 6.
THE PESHAWUR.

Practice—Stay of Proceedings—'Lis alibi pendens.'

This was a summons adjourned into Court, and was an application by the owners of the Peshawur, the defendants in an action in the Admiralty Division, for an order to stay the proceedings in this action. They had commenced an action in the Vice-Admiralty Court of Ceylon against the plaintiffs, the owners of the ship Glenray, some time before the action was begun here, and this suit was still pending. Both actions were in respect of the same collision. The Glenray never traded to this country; and the Peshawur, at the time of the application, was on a voyage to Ceylon.

Phillimore appeared for the owners of the Glenray.

Roscoe for the owners of the Peshawur.

Sir R. J. PHILLIMORE held that he had a discretion to make such an order, and that he should exercise it by ordering a stay of the proceedings in the High Court.

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LINDLEY, L.J.
BOWEN, L.J.
Jan. 31.

SINGER MANUFACTURING COMPANY *v.* LOOG.

Practice—Shorthand Notes of Evidence—Printed Copies—Additional Rules of the Supreme Court, 1875, *Order VI., Schedule* (*Copies*).

The appeal of the plaintiff company in this case had been dismissed, with costs, including 'the costs of the shorthand writer's notes of the evidence.' For the purposes of the appeal, the shorthand notes of the evidence and judgment in the Court below had, in the first instance, been printed by arrangement between the parties—the plaintiffs paying five-eighths of the printer's bill, and the defendant paying the remaining three-eighths of the bill and receiving twenty copies.

On the taxation of the costs under the order of the Court of Appeal, the plaintiffs repaid the defendant's solicitor the three-eighths of the printer's bill that he had originally paid; but he claimed, in addition, to be allowed and paid 3*d.* per folio for six of the copies of the shorthand notes of the evidence and judgment in the Court below—viz. one copy for each of the counsel he retained on the appeal, and one copy for each of the three judges of the Court of Appeal.

The taxing-master having disallowed the claim, the defendant appealed.

Webster, Q.C., for the appellant.

Rigby, Q.C., and *Candy* for the respondents.

Their LORDSHIPS held that, under the common order giving a party 'the costs of the shorthand writer's notes of the evidence,' his solicitor was entitled on taxation of costs, where the shorthand notes had been printed in the first instance, to 3*d.* per folio for one copy of the shorthand notes of the evidence supplied to each of the counsel retained on the appeal, and one copy of the shorthand notes of the judgment supplied to each of the judges of the Court of Appeal; and to that extent allowed the claim.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 1.

In re WILKINSON. *Ex parte* BERRY.

Bankruptcy—Assignment of whole of Property to secure antecedent Debt—Agreement for fresh Advances—Bankruptcy Act, 1869, *s.* 6, *subs.* 2.

The debtor, Berry, had executed a bill of sale of his engines, machinery, plant, stock, and other personal chattels used by him in his trade of cotton spinner, to Seville & Co., to secure the payment of a sum due to them for cotton supplied, and the price of further supplies up to a certain amount. The bill of sale contained a recital that the mortgagees had agreed to furnish the further supplies; but they did not covenant to do so, and the deed was not executed by them. They

made further supplies. Berry then filed a liquidation petition. The trustee impeached the deed, on the ground that it was an assignment of the whole of the debtor's property in consideration of a pre-existing debt. The County Court Judge declared it void; but the CHIEF JUDGE reversed his decision.

The trustee now appealed.

Horton Smith, Q.C., and *S. Taylor*, for the appellant, contended, on the authority of *Ex parte Daun*, 51 Law J. Rep. Chanc. 290; L.R. 17, Chanc. Div. 26, that the deed could not be supported, because there was no binding agreement by the mortgagees to make the fresh advance.

Winslow, Q.C., and *Bigham* for the mortgagees.

Their LORDSHIPS affirmed the decision of the Chief Judge.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 1.

Ex parte RUSSELL. *In re* ROBINS.

Bankruptcy—Composition—Small Amount of Assets—Abuse of Process of Court—Bankruptcy Act, 1869, *s.* 126—*Bankruptcy Rules*, 1870, *Rule* 295.

This was an appeal from a decision of the CHIEF JUDGE, affirming that of the County Court judge at Barnstaple.

The debtor had filed a liquidation petition, with debts amounting to 304*l.* 18*s.*, and assets 8*l.* 13*s.* Resolutions had been passed by the creditors accepting a composition of 3*d.* in the pound, to be secured by one of their number. The resolutions were ordered to be registered in spite of the opposition of a creditor, who now appealed.

Brigham for the appellant.

Finlay Knight for the debtor.

Their LORDSHIPS reversed the decision of the Chief Judge, and ordered the registration to be vacated, on the ground that the resolutions were evidently passed with a view to the benefit of the debtor; and said that, although the creditors might have been actuated by motives of kindness towards the debtor, yet that was not the object of the Bankruptcy Act, and could not be allowed.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 1.

Ex parte NICHOLLS. *In re* JONES.

Bankruptcy—Equitable Assignment of Receipts of Business—Bankruptcy of Assignor—Trustee's Title by Relation—Bankruptcy Act, 1869, *s.* 11.

This was an appeal from a decision of Mr. Registrar Brougham, sitting as CHIEF JUDGE.

The bankrupts, Jones & Barber, were lessees of the Alexandra Palace, and, before their bankruptcy, had entered into a verbal agreement with the Great Northern Railway Company, by which the company were to receive from passengers to the Palace a gross sum in respect of railway fare and admission, and were to pay over to Jones & Barber a proportion of the receipts. Jones & Barber had assigned the moneys due and to become due to them under this agreement to Younger & Co., by way of security for advances. Jones & Barber subsequently filed a liquidation petition, and a trustee was duly appointed. The question was whether the trustee was entitled, as against Younger & Co., to the moneys received by the company in respect of admission to the Palace between the date of the filing of the petition and the appointment of the trustee. The registrar decided in favour of Younger & Co., and the trustee appealed.

Cooper Willis, Q.C., and *J. C. Earle* for the appellant.

Winslow, Q.C., and *Houghton* for Younger & Co.

Their LORDSHIPS held that the company were merely agents to receive the sums paid for admission to the Palace, which were really gross receipts of the business of Jones & Barber, and could not be assigned by them as against the title of their trustee in bankruptcy, which related back to the date of the petition. They therefore reversed the decision of the registrar.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 9.

THE ATTORNEY-GENERAL *v.* THE VESTRY OF BERMONDSEY.

Corporation—'Ultra vires'—Parties—Costs.

Appeal from the decision of FRY, J., reported 51 Law J. Rep. Chanc. 848, holding that members of a vestry who had voted for an illegal application of parish funds, and who were made co-defendants with the vestry to an action to restrain such application of the parish funds, could not be ordered to pay the costs of the action personally.

S. Dickinson for the appellant.

Ingle Joyce and *Russell Roberts* for the respondents.

Their LORDSHIPS affirmed the decision of Fry, J.; and dismissed the appeal, but without costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Feb. 7.

COOTE *v.* JUDD.

Copyright — Registration — Name of first Publisher—Notice of Objections—Service after Issue joined—Copyright Act, 1842 (5 & 6 *Vict. c.* 45), *ss.* 13, 16, 24.

This was an action to restrain the infringement of the plaintiffs' copyright in a song. In registering the title, the name of the first publisher was not entered; but, instead of it, the name of the proprietor, who was not the first publisher. The defendants claimed indemnity against the plaintiffs' claim from a third party, who was served with notice under Order XVI., Rule 18, and obtained leave to defend. Pleadings were delivered and issue joined, and notice of trial given for November 2, 1882. After this, on December 16, 1882, the third party served a notice of objections under section 16 of the Copyright Act on the plaintiffs, including the objection that the plaintiffs were not the first publishers. Section 16 requires notice of objections to be given 'on pleading' to the action.

Hemming, Q.C., and *De Courcy Atkins* for the plaintiffs.

Horton Smith, Q.C., and *Bunting* for the defendants.

Millar, Q.C., F. Turner, and *Vernon Smith* for the third party.

BACON, V.C., held that the registration was defective; and that the plaintiffs being, therefore, unable to sue by virtue of section 24, it was unnecessary to consider whether the objections were admissible under section 16 of the Copyright Act; and dismissed the action.

Chancery Division.
BACON, V.C.
Feb. 8.
} LINGARD-MONKE *v.* JENKINS.

Mortgage—Foreclosure—Request for Sale by Mortgagor—Discretion—Deposit—Conveyancing Act, 1881 (44 & 45 *Vict. c.* 41), *s.* 25, *subs.* 2.

This was a foreclosure action.

Over 9,000*l.* was due to the plaintiff, on his security. No interest had been paid since 1877. The plaintiff had gone into possession, and was also lessee of part of the property comprised in the mortgage, under a lease which would expire in 1866, and had spent considerable sums of money on the property comprised in the lease. The plaintiff claimed foreclosure.

The defendant deposed that the property had in 1878 been valued at over 11,000*l.*; and asked for a sale, under section 25, subsection 2, of the Conveyancing Act, 1881.

Marten, Q.C., and *Davenport*, for the plaintiff, contended (1) that, under the circumstances of this case, the Court would not think fit to order a sale under section 25, subsection 2; and (2) that, if it did, it would fix a reserve bid to cover the amount of the plaintiff's principal, interest, and costs, and direct a deposit of 200*l.* to be made to meet the expenses of an abortive sale.

Hamilton Humphreys, for the defendant, stated that the defendant was not in a position to make a deposit, and asked for a sale without any terms as to a deposit, contending that the old practice, under 15 & 16 Vict. c. 86, s. 48, was now altered in this respect.

Marten replied.

BACON, V.C., held that, under the circumstances of this case, he did not think fit to direct a sale, and gave judgment for foreclosure. His lordship added that, if he had directed a sale, he should certainly have ordered a sufficient deposit to be made to save the mortgage from the hazard of any loss by an abortive sale.

Chancery Division.
FRY, J.
Feb. 8.
} DONNELL *v.* BENNETT.

Jurisdiction—Injunction—Negative Contract.

This was a motion to restrain the breach of a contract not to supply fish refuse to any manufacturer other than the plaintiff, part of a contract under which the plaintiff undertook to buy, and one of the defendants (Cormack) to sell, all Cormack's refuse. The other defendants were rival manufacturers of manure with the plaintiff, who had induced Cormack to break his contract and supply themselves.

Giffard, Q.C., and *S. Hall* for the plaintiff.

Cozens-Hardy, Q.C., and *Williamson* for the defendants.

FRY, J., held that, though the positive part of the contract could not be specifically enforced, an injunction could be granted restraining the breach of the negative part of the agreement; and, accordingly, he granted an injunction.

Chancery Division.
FRY, J.
Jan. 29. Feb. 9.
} SANDS *v.* THOMPSON.

Mortgage—Legal Estate—Statute of Limitations (3 & 4 *Wm. IV. c.* 27), *ss.* 7, 25, 34.

This was a summons under the Vendor and Purchaser Act to determine whether a requisition to get in the legal estate from a mortgagee whose debt was paid off in 1856 could be supported.

Cookson, Q.C., and *Whateley* for the purchaser.

Wolstenholme for the vendor.

FRY, J., held that there was no legal estate in the mortgagee.

Chancery Division.
FRY, J.
Feb. 12.
} *In re* THE CARRIAGE CO-OPERATIVE SUPPLY ASSOCIATION. *Ex parte* CLEMENTS.

Companies Act, 1862, *s.* 163—*Distress.*

This was an application by landlords for leave to distrain, notwithstanding a winding-up petition.

At the date of the winding up, the company were in possession of the premises under an agreement for a sub-lease. Previously to the winding up there was a sum of 90*l.* due to the superior landlords for rent. They had threatened to distrain, and the company had given them 45*l.* in money and an acceptance for the other 45*l.* Mr. Brown, a creditor, had entered and taken possession of the goods sought to be distrained upon; and the contest was really between the superior landlords and Brown.

Cookson, Q.C., and *Stirling* for the summons.

Cozens-Hardy, Q.C., and *Terrell* for Brown.

E. Ford for the liquidator.

FRY, J., allowed the applicants the benefit of distress.

Chancery Division.
PEARSON, J.
Jan. 29.
} SWAINSTON *v.* FINN AND THE METROPOLITAN BOARD OF WORKS.

Artisans and Labourers' Dwellings Improvement Act, 1875 (38 & 39 *Vict. c.* 36), *s.* 20—*Purchase of Lands—Extinguishment of Easements.*

The Metropolitan Board of Works, under the powers of the Artisans and Labourers' Dwellings Improvement Act, 1875, purchased and took, for the purpose of an improvement scheme, a certain messuage adjoining the plaintiffs' house. The plaintiffs claimed to have acquired by prescription an easement or right of support for their house from the messuage taken by the board. The period limited for the compulsory purchase of lands by the board under the Act had expired. The board had taken no steps whatever to acquire the plaintiffs' easement. The plaintiffs brought an action for an injunction to restrain the board and their contractor from pulling down or removing the messuage taken by the board in such a manner as to interfere with the plaintiffs' right to support. The question was whether section 20 of the Act of 1875 (which provides, in effect, that upon the purchase of lands under the Act, easements in, through, or under the land purchased shall be extinguished, compensation being made to the person entitled to the easements) operated so as to preclude the plaintiffs from any right other than a right to compensation; or

whether it was necessary that the board, in order to avail themselves of that section, should have taken proceedings for the acquisition of the easement.

Fischer, Q.C., and *Northmore Lawrence* for the plaintiffs.

W. Pearson, Q.C., and *Methold*, for the Board of Works, referred to *Badham* v. *Morris*, 45 L.T. (N.S.) 579, as an authority, deciding that the effect of the section was to extinguish all easements whatever relating to any lands purchased under the powers of the Act of 1875.

PEARSON, J., followed the case cited, observing that it was in accordance with his own view of the construction of the section. He accordingly dismissed the action.

Chancery Division. PEARSON, J. Feb. 8. } THE NEW RIVER COMPANY *v.* THE WARE UNION RURAL SANITARY AUTHORITY.

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 16—*Construction of Section—Notice of Intention of Local Authority to carry Sewer through Lands.*

By section 16 of the Public Health Act, 1875, any local authority is empowered to carry a sewer through, across, or under any turnpike road, &c. . . . 'and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into, through, or under any lands whatsoever within their district.' The defendants, as local authority, had prepared a certain scheme of sewerage which, as originally projected, did not affect the plaintiffs' land. A builder, however, had bought some building land adjoining the New River, and he proposed to the local authority that they should alter their scheme so as to provide drainage for the houses about to be erected by him. This alteration involved the carrying of the sewer under the New River. The defendants were willing to make the alteration, provided they were not called upon to pay compensation; and correspondence took place between the defendants' engineer and the engineer of the plaintiffs, in which the former forwarded the latter a tracing of the mode in which it was intended to carry the sewer under the New River, and inquired whether the plaintiffs would waive their right to compensation. The defendants proceeded to construct their sewer under the New River, and the plaintiffs brought this action for an injunction to restrain them from so doing. The question was whether the defendants had sufficiently complied with the requirements of the above section.

Rigby, Q.C., and *Farwell* for the plaintiffs.

Graham Hastings, Q.C., and *G. Henderson* for the defendants.

PEARSON, J., said that he should construe section 16 of the Public Health Act, 1875, as if the parenthesis were not exactly in the place where it ought to be, and as if the words above set out stood thus: 'If on the report of the surveyor it appears to be necessary, into, through, or under any lands whatsoever within their district, after giving reasonable notice in writing to the owner or occupier.' He was of opinion that the defendants had not complied with the section. He could not possibly take the correspondence which had passed between the engineers as notice to the plaintiffs that the defendants intended under their statutory powers to make the sewer, whether the plaintiffs assented or not. He must take it as something passing between the parties tentatively in order to ascertain whether or not the plaintiffs would demand compensation if the sewer were carried through their land; and he was satisfied in this by the consideration that the section said the local authority were only to act 'if, on the report of the surveyor, it appeared necessary,' and that, as the proposed sewer was only a deviation from the original scheme, it was doubtful whether any such report could be obtained. His lordship, therefore, granted an injunction to restrain the defendants from continuing the works, except in exercise of their statutory powers.

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COURT OF APPEAL.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 8.

Ex parte FOSTER. *In re* FOSTER.

Bankruptcy—Debtors' Summons—Dismissal—Bankruptcy Act, 1869, *s.* 7.

This was an appeal from a decision of the CHIEF JUDGE reversing a decision of the registrar, who had dismissed a debtors' summons which had been taken out by Heilbut & Co. against Foster & Co.

Heilbut & Co. were creditors of Foster & Co. for 188*l.* 15*s.* 7*d.* upon a dishonoured bill of exchange. The debtors, being in difficulties, summoned a private meeting of their creditors, at which a resolution was passed that the debtors' estate and effects should be assigned to trustees, for the benefit of the creditors; and, in pursuance of this resolution, the debtors gave up possession of their property to trustees named in a draft deed which was prepared, but never executed. Heilbut & Co. were present at the meeting, but did not assent to or dissent from the resolution.

The Chief Judge had discharged the order of the registrar, on the ground that although he might have stayed proceedings on the summons, yet he had exceeded his authority in dismissing it, neither the debt nor the amount being disputed.

The debtors appealed.

Winslow, Q.C., and *S. Taylor* for the appellants.

Cooper Willis, Q.C., and *F. Cooper Willis*, for the respondents, were not heard.

Their LORDSHIPS said that a debt, in order to support a summons, must be recoverable. If there was a legal or equitable defence to the debt the summons ought to be dismissed. Here there was neither. The resolution passed at the meeting was only intended to be binding if the deed was executed by all the creditors, which had not been done. Heilbut & Co. had not bound themselves by acquiescence, and they could not prevent the debtors giving up possession of their property to the proposed trustees. The agreement between the debtors and their creditors was only a preliminary step, and could not prevent Heilbut & Co. from issuing a debtors' summons. The appeal must be dismissed.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 12.

MASON *v.* MASON.

Divorce—Delay.

Appeal from a judgment of Sir J. HANNEN dismissing a petition by the appellant for dissolution of his marriage on the ground of the adultery of his wife. The case is reported 51 Law J. Rep. P. D. & A. 88; L. R. 7, P. D. & A. Div. 233.

In 1878 the husband filed a petition for judicial separation on the ground of the adultery of his wife committed in 1877, and obtained a decree for judicial separation and 50*l.* damages against the co-respondent. He did not enforce the decree. The wife continued to live in adultery with the co-respondent. In March, 1882, he filed the present petition, but it was dismissed on the ground of the lapse of time which had expired since obtaining the decree for judicial separation. No evidence was adduced in the Court below to explain the delay.

Middleton, for the appellant, asked leave to read an affidavit filed since the hearing; but the Court declined to admit it, but allowed the petitioner to be examined orally before the Court.

On his examination he stated that, since that time, he had been in receipt only of 26*s.* a week, and had no other property; a small sum which he had at the time of obtaining the decree having been all spent in paying costs, and that want of money had prevented his enforcing his judgment for damages, and taking any steps to procure the dissolution of his marriage; and that, until 1880, he had hoped that his wife (who had once returned to him) would return again.

The respondent did not appear.

Their LORDSHIPS held that, under the circumstances, having regard to the further evidence, they were justified in making the order, the delay having been sufficiently explained.

Judgment of Sir J. Hannen discharged, and decree *nisi* made.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 14.

In re CAREY.
REGINA *v.* NASH.

Illegitimate Infant—Custody—Immorality of Mother.

Appeal from a decision of the Divisional Court of the Queen's Bench Division.

In April, 1876, Rose Carey, a single woman, gave birth to a female child. She placed the child with Mr. and Mrs. Nash, respectable working people, who, for the last six years, had, at their own expense, maintained, brought up, and educated the child.

The mother continued to lead an immoral life, and was now living 'under the protection of a gentleman.'

In December, 1882, she claimed to have the child delivered up to her, stating that she intended to send it on the stage, and took out a summons for leave to issue a writ of *habeas corpus* directed to the Nashes to compel them to give up the child.

NORTH, J., sitting in chambers, dismissed the summons. The mother appealed. Fresh evidence was filed on the appeal which went to show that the mother wished the child to be given up to her brother-in-law and sister, who were respectable people and were willing to take the child.

The Divisional Court ordered the child to be given up to the relations of the mother; and, from this order, the Nashes appealed.

H. L. Fraser, for the appellants, referred to *In re White*, 10 L.T. 349; and *In re Lloyd*, 3 Man. & G. 548; and submitted that an illegitimate child, being in the view of the law *nullius filius*, the Court would not interfere so long as the child was being properly maintained. It would have regard to the moral and future welfare of the child. The child was now in 'a home,' and was being well educated and cared for, and would be in a better position than if she were given up to the mother or her relations.

H. Reed, for the respondents, was not called upon.

Their LORDSHIPS dismissed the appeal. Now that all the Courts were Courts of law and equity, the question did not depend upon the mere legal right upon *habeas corpus*; and, in a Court of equity, not only was the blood relationship of the mother of an illegitimate child recognised, but that, also, of the putative father. The Court had regard to the interests of the child; and the blood relationship, as against pure strangers, gave a right *primâ facie* to the custody of the child. Here the mother wished to place her child with her sister, who was a respectable married woman, and was willing to take her, and whose husband was in a position of life superior to that of the appellants. The child must be given into the custody of her blood relations.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 8, 15.

Ex parte GRIFFITH. *In re* WILCOXON.

Bankruptcy—Fraudulent Preference—Pressure—Bankruptcy Act, 1869, *s.* 92.

A. and R. Wilcoxon, the debtors, were cabinet makers and upholsterers, and employed Griffiths as their traveller at a salary of 500*l.* per annum, which he had authority to deduct out of moneys received by him on their behalf. This authority was only partially acted upon by Griffiths, and, eventually, the arrears of salary due to him amounted to 2,300*l.* On June 29, 1881, the debtors were in difficulties, and a correspondence took place between them and Griffiths which resulted in a proposal by Griffiths that the debtors should assign to him certain debts due to the firm. This the debtors at first refused to do; but ultimately, on July 14, they duly assigned to Griffiths debts to the amount of 1,044*l.* On July 15 the firm signed a liquidation petition which was filed on July 18. The trustee in the liquidation impeached the assignment on the ground that it constituted a fraudulent preference; and Mr. Registrar Pepys, acting as CHIEF JUDGE, decided in his favour.

Griffiths appealed.

Winslow, Q.C., and *Herbert Reed* for the appellant.

Sydney Woolf and *Montefiore Micholls*, for the trustee, were not heard.

Their LORDSHIPS said that the law as to fraudulent preference had been put into definite shape and form by the Bankruptcy Act, 1869. The Court ought not to allow itself to be drawn into the discussion of metaphysical questions of volition and pressure, but rather to have regard to the words of the statute. In the present case they were of opinion that the debtors were not influenced by a demand for a preference, but by their desire to accede to it. The payment was made with the sole view of preferring the creditor, and, therefore, clearly came within the very words of section 92 of the Act.

Court of Appeal.
JESSEL, M.R.
LINDLEY, L.J.
Feb. 21.

DANIEL *v.* FORD.

Practice—Discovery—Action for Recovery of Land by legal Title—Affidavit of Documents—Rules of Court, Order XXXI., Rules 12, 13.

This was an appeal by the plaintiff from an order of CHITTY, J., dismissing an application on the part of the plaintiff for an affidavit of documents by the defendants. The case is noted Law J. Notes of Cases, vol. xvii. 127.

The action was for recovery of land, the plaintiff claiming by a purely legal title.

M'Naghten, Q.C., and *Eyre* for the plaintiff.

Rigby, Q.C., and *Stirling* for the defendant.

Their LORDSHIPS dismissed the appeal; holding that the case was governed by the decision of *Lyell* v. *Kennedy*, 51 Law J. Rep. Chanc. 409; L. R. 20 Chanc. Div. 484. There was no distinction between the right to discovery and the right to production of documents.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Feb. 14, 15.

GENERAL CREDIT AND DISCOUNT COMPANY *v.* GLEGG.

Mortgage—Commission payable in default of punctual Payment—Higher Rate of Interest by Way of Penalty—Validity.

Clarke and Punchard were railway contractors, and applied to the plaintiffs to advance them moneys from time to time, which the plaintiffs agreed to do on the terms of such instalments being repaid within six months from the date when the same should be advanced; and that if any instalment should not be repaid at the time it should become due, Clarke and Punchard should pay interest at a rate agreed upon,

until the same should be repaid, 'and also a commission of 1 per cent. for every month that may elapse between the due date and the date of the repayment of such instalment, upon the whole amount of such instalment.' Securities were transferred to the plaintiffs to secure all moneys due to them in respect of their advances. This was an action by the plaintiffs for foreclosure or sale of their securities; and the question was raised whether the stipulation for commission was valid.

Hemming, Q.C., and *Norton*, for the plaintiffs, contended that, in the event of default of payment of an instalment, there was a contract for payment of commission, which was perfectly valid.

Millar, Q.C., and *Maclaren*, for second mortgagees, contended that the provision was in the nature of a penalty, and would be relieved against.

Stirling for third mortgagees.

E. Beaumont and *Grosvenor Woods* for other defendants.

BACON, V.C., said that the contract for payment of commission was a distinct and independent agreement for payment of 1 per cent. per month on the happening of a certain event, and that it was not within the authorities which decided that a provision for an increased rate of interest was in the nature of a penalty; and that the accounts must be taken on the footing of the validity of the stipulation; and gave judgment for foreclosure, with liberty for any parties to apply in chambers for a sale.

Chancery Division. FRY, J. Feb. 15. } DAVIES *v.* DAVIES.

Mortgage—Redemption—Default of Mortgagor—Order of Course.

This was a redemption action in which a decree had been made. The mortgagee was in possession. The defendant attended at the Rolls Chapel to receive payment, but the plaintiff made default (see Seton 1,091).

E. T. Holland asked for an order of course, dismissing the action.

FRY, J., said that the plaintiff had better be served.

Chancery Division. CHITTY, J. Feb. 7, 8. } *In re* JAKEMAN'S TRUSTS.

Married Woman—Deed acknowledged—Fines and Recoveries Act (3 & 4 *Wm. IV. c.* 74), *s.* 77—*Prior Bankruptcy of the Husband—Concurrence of the Husband in Deed acknowledged.*

A married woman was entitled to a share in the proceeds of real estate, subject to the life interest of the testator's widow. During the lifetime of the tenant for life, her husband executed a deed, assigning all his property to his creditors, and subsequently became bankrupt. After the death of the tenant for life the husband joined with his wife in executing deeds, which were acknowledged by the wife under the Fines and Recoveries Act, creating charges on the wife's share of the testator's estate.

CHITTY, J., held that the creditors' deed and the bankruptcy of the husband did not preclude him from joining with his wife in executing the acknowledged deeds; and that the persons claiming under those deeds were entitled, according to their priorities, in preference to the trustee of the creditors' deed and the assignee in the bankruptcy.

Chancery Division. CHITTY, J. Jan. 25. Feb. 20. } *In re* BROWN. WARD *v.* MORSE.

Practice—Costs—Claim and Counter-claim both successful.

When the plaintiff's claim and the defendant's counter-claim have both been successful, the plaintiff, in the absence of any special direction to the contrary, is entitled to the general costs of the action, notwithstanding that the result of the litigation as a whole is in favour of the defendant.

Beddall and *J. G. Wood* for the parties.

Chancery Division. CHITTY, J. Feb. 20. } HAMILTON *v.* THOMAS.

Practice—Substituted Service—Subpœna to name Solicitor.

The defendant in this action was a defaulting trustee, whom the plaintiff had been unable to serve personally. Leave for substituted service had been obtained, and a copy of the writ had been served, together with a copy of the order for substituted service, upon the defendant's wife; and like copies had been sent through the post, in a prepaid letter, to the defendant at his last known address. The defendant appeared through a solicitor. Before the hearing, the solicitor was struck off the rolls; but his name still remained on the record.

Chadwyck-Healey, for the plaintiff, applied for leave to make substituted service of a subpœna to name a solicitor, together with a notice to the effect that, in default of obedience to the subpœna, judgment would be moved for, pursuant to an accompanying notice of motion, without further notice. *Dean* v. *Lethbridge*, 26 Beav. 397, and *Gibson* v. *Ingo*, 2 Ph. 402, were referred to.

CHITTY, J., directed service to be made in the manner directed with respect to the writ of summons.

Chancery Division. PEARSON, J. Feb. 10, 12. } CORRIE *v.* ALLEN.

Practice—Third Party—Right to add—Order, whether to be made 'ex parte'—Motion to discharge 'ex parte' Order—Costs of Third Party—Rules of Court, 1875, *Order XVI., Rules* 17, 18.

The plaintiff was the owner in fee simple of certain land. One of his predecessors in title had granted a lease for a term of years, expiring on December 24, 1882, by the terms of which the lessee was absolutely prohibited from breaking the surface of the land. The lease became vested in one N., who granted an under-lease to the defendant, for building purposes, and thereby entered into the usual covenant for quiet enjoyment, limited to her own acts and those of persons claiming under her. The defendant obtained an assignment of certain intermediate leases, which it was alleged gave him a right to break the surface after December 24, 1882; but before that date he proceeded to dig foundations for the houses which he was about to build, and to take away and sell gravel; and in respect of these acts, the plaintiff brought this action for an injunction and damages. The defendant claimed that if he were ordered to pay damages to the plaintiff, he would have a right of indemnity over against N., under the covenant for quiet enjoyment.

Accordingly, under Order XVI., Rule 18, he obtained *ex parte* an order that N. should be added as a third party. N. entered an appearance. The plaintiff moved to discharge the order made *ex parte*; and the defendant took out a summons for directions as to the mode in which the questions in the action were to be determined. This summons was adjourned into Court, and came on to be heard together with the motion. The defendant then filed a further affidavit, basing his claim to indemnity not on the covenant for quiet enjoyment, but on a representation or implied contract by N., that she had power to grant a building lease. The main question was, whether N. ought to be added as third party; but two other questions were raised—viz. whether an order to add a third party ought to be made *ex parte*; and whether the motion to discharge the order was a proper proceeding.

Rigby, Q.C., and *Eyre* for the plaintiff.

Graham Hastings, Q.C., and *John W. Evans* for the defendant.

Creed, for the third party, supported the application of the plaintiff.

PEARSON, J., said that, under the Rule of Court, a person ought only to be added as a third party where there was really some one point to be decided between the plaintiff and defendant and the third party in which they were all interested, or where the defendant could show a clear *primâ facie* case to indemnity or relief over against the third party. In the present case there was no question between the parties for which the presence of N. was necessary. The defendant could not possibly have any right to indemnity under the covenant for quiet enjoyment, limited as it was, and he had not made out a *primâ facie* case on the other ground. The amount of damages recovered in this action would be no measure of the damages which he would recover over from N. As to whether the order ought to have been made *ex parte* (on which point it was said there were conflicting opinions of Hall, V.C., and Quain, J.), he preferred the view of Hall, V.C., and should decline in future to make such orders *ex parte*. But for the case of *Schneider v. Batt*, L. R. 8 Q.B. Div. 701, he should have thought the motion to discharge the *ex parte* order was perfectly regular. On the authority of that case it had been argued that there was no necessity for the motion, and that the whole question ought to have been decided on the summons for directions as to the mode of trial. But in the present case he could not adopt that view, because the *ex parte* order was improperly obtained upon a ground which could not be supported and was not pressed at the hearing. He therefore discharged the *ex parte* order, with costs, and made no order upon the summons. He held, also, that he had no jurisdiction at this stage to make any order as to the costs of the third party.

Chancery Division.
POLLOCK, B.
(for PEARSON, J.)
Feb. 14.

HARVEY *v.* THE MUNICIPAL PERMANENT INVESTMENT BUILDING SOCIETY.

Building Society—Borrowing Member—Redemption—Accounts—Premium—Interest.

A building society may properly, if in accordance with its rules, on making an advance to a borrowing member, charge a premium on the amount of the advance, proportioned to the intended duration of the loan, and require that such premium shall be added to the principal sum advanced, and interest paid on the whole, and require payment of the premium for the entire period, even in case of the loan being repaid at an earlier date than that to which the premium was calculated.

In accordance with the prospectus and rules of a building society, as construed by the Court, the society advanced to a borrowing member the amount of his shares, charging him a premium calculated on the basis of the advance being for fifteen years; and a mortgage deed of the property in respect of which the advance was made was executed, by which the premium was added to the principal, and repayment by instalments provided for in accordance with the rules; the instalments for each year being made applicable in paying interest charged on the whole principal sum made up of the sum advanced and the premium, and in reduction of that principal sum.

The borrower claimed to redeem the mortgaged property before the expiration of the fifteen years on the basis of an account in which he was charged with only a part of the premium proportioned to the shorter period for which the loan was retained, and no interest was charged upon the premium.

HELD, that the borrower could only redeem on the basis of a mortgage in which the whole premium was charged at the outset, and added to the actual sum advanced, and interest was charged on the principal sum so constituted.

Chancery Division.
PEARSON, J.
Feb. 15, 17.

WHEELWRIGHT *v.* WALKER.

Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *ss.* 2 (*subs.* 1, 8), 38, 45—*Settlement—Power of Tenant for Life to sell, notwithstanding Sale of Reversion prior to Act—Existence of Trustees to whom Notice can be given a necessary Condition to Sale by Tenant for Life.*

Land was devised to trustees in trust for the defendant for life; and, after his death, upon trust to sell and divide the proceeds amongst his children. He had one child only, a daughter, who was married. In 1880 she and her husband sold her equitable remainder in fee to the plaintiff. In January, 1883, the defendant (who was upwards of seventy years of age, and had had notice of the sale by his daughter) advertised the fee simple of the land for sale, under the powers of the Settled Land Act, 1882. The plaintiff brought this action, and now moved the Court, for an injunction to restrain the defendant from selling.

Graham Hastings, Q.C., and *Rawlins* for the plaintiff.

Pearson, Q.C., and *Byrne* for the defendant.

PEARSON, J., held that, having regard to the definition of 'settlement' contained in section 2, subsection 1, of the Act, the defendant had full power to sell, notwithstanding that the remainder in fee had been sold to the plaintiff prior to the Act; that the effect of section 2, subsection 8, and section 45 was that no sale by a tenant for life could be made under the Act unless there were in existence trustees, having a present power to sell or consent to a sale, to whom notice of the intended sale could be given; that, in the present case, there were no such trustees; that, under section 38, the tenant for life could apply to the Court to appoint fit persons trustees of the settlement for the purposes of the Act; that the contemplated sale was, therefore, premature; and that the defendant must be restrained from selling until trustees of the settlement had been appointed.

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WEBBER *v.* WEDGWOOD.

Practice—Amendment of Pleadings—Cost of Action sole Question to be determined.

Appeal from a decision of PEARSON, J., noted *ante*, p. 8.

Davey, Q.C., and *Gent* for the appellant.

Graham Hastings, Q.C., and *C. Browne* for the respondent.

After some discussion it was agreed, at the suggestion of their LORDSHIPS, that the action should be dismissed, without costs.

Court of Appeal.
JESSEL, M.R.
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HACK *v.* THE LONDON PROVIDENT BUILDING SOCIETY.

Building Society—Reference to Arbitration—Jurisdiction of Court—Building Societies Act, 1874, *s.* 34.

Appeal from a decision of PEARSON, J., noted *ante*, p. 12.

Dunham for the appellant.

William King for the respondents.

Their LORDSHIPS affirmed the decision of the Court below; and dismissed the appeal, with costs.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
BOWEN, L.J.
Feb. 28.

KEARSLEY *v.* PHILLIPS AND OTHERS.

Practice—Inspection—Production of Documents in joint Possession of Defendant and Person not a Party to the Action.

Appeal from the Queen's Bench Division, reported 52 Law J. Rep. Q.B. 8.

The Queen's Bench Division decided that the defendant, who had made an affidavit of documents, was not obliged to produce for inspection by the plaintiff certain documents which he stated were in the joint possession of himself and another person not a party to the action, although his affidavit did not state that it was impossible for him to do so.

The plaintiff appealed.

Bigham and *C. A. Russell* for the appellant.

Smyly, for the defendant, was not called on.

Their LORDSHIPS dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
FRY, J.
Feb. 5.

Re BOOKER & Co. (LIM.). WEST OF ENGLAND BANK *v.* MURCH.

Lord Cranworth's Act, s. 27—*New Trustee—Executor—Compromise.*

This was a summons by a purchaser to have a contract for the sale of certain ironworks, partly freehold and partly leasehold, rescinded, on the ground that a good title had not been shown. The sale had been made in the winding-up of Booker & Co., and in a debenture-holder's action.

The property had been conveyed to Booker & Co. (Limited), by Thos. W. Booker and Clara G. Booker, the executrix and trustee of the will of Jno. P. Booker; and it had been partnership property of Thos. W. and Jno. P. Booker. Part of the consideration consisted of debentures.

Mr. Jno. P. Booker, by his will, devised and bequeathed his real and leasehold property to two trustees for sale, and appointed them executors, and his wife, Clara G. Booker, executrix. The trustees both disclaimed; neither of them proved the will; and the last disclaiming trustee appointed Clara G. Booker trustee. Two of the objections to the title raised were, that the last disclaiming trustee had no power to appoint only one trustee, under Lord Cranworth's Act; and the trustee of J. P. Booker could not exercise her trust of a sale for a consideration partly in debentures.

Cookson, Q.C., and *H. R. Kirby* for the purchasers.

Davey, Q.C., and *W. P. Beale* for the vendors.

Everitt, Q.C., and *E. Ford* for other parties.

FRY, J., held Mrs. Booker properly appointed trustee; and that the sale was part of a compromise with creditors properly made by an executrix.

Chancery Division.
FRY, J.
Feb. 19, 21.

SMYTH PIGOTT *v.* SMYTH PIGOTT.

Settlement — Construction — Hotchpot — 'Capable of taking Effect.'

On the marriage of Mr. and Mrs. Smyth Pigott, a sum of 30,000*l.* was settled on trusts, which gave the husband and wife powers of appointing the fund among children of the marriage. In default of appointment the fund went among the children equally; but there was no hotchpot clause in the settlement. Four appointments were made to four of the children of the marriage of respective sums of 6,000*l.* Each of those appointments was made subject to a hotchpot provision. The balance of the trust funds was subsequently appointed to one of the appointees without any hotchpot provision. One of the appointments of 6,000*l.* was made in favour of a daughter, who married a Mr. Wellington. Her appointed share was settled with a provision that in case there should be failure of her children, the resettled fund should, on the death of the survivor of Mr. and Mrs. Wellington, be held on the trusts of the Smyth Pigott settlement, or such as should be then subsisting or capable of taking effect.

Mrs. Wellington survived her husband, and died, leaving no child, in 1882, after the funds of the original settlement had been distributed. This was an action for the administration of the Wellington settlement.

Everitt, Q.C, and *Langley* for the plaintiff, one of the children of Mr. and Mrs. Smyth Pigott, who had not been benefited by an appointment.

Cookson, Q.C., and *Sangster Green* for a child who had been appointed to.

Locock Webb, Q.C., and *Platt* for the trustees of the Smyth Pigott settlements.

Cozens-Hardy, Q.C., for the representative of Mrs. Wellington.

E. Ford for the trustees of the Wellington settlement.

FRY, J., held (1) that the trusts of the Smyth Pigott settlement were capable of taking effect; and (2) that the 'hotchpot' provisions in the various appointments applied to the fund the subject of the gift over in the Wellington settlement.

Chancery Division.
FRY, J.
Feb. 21.

In re BULLMORE. BULLMORE *v.* WINTER.

Will—Construction—'Husband'—'Surviving.'

The testator in this action gave a third of his residue in trust for the benefit of his daughter Beatrice, and after a life interest for the daughter he directed the income to be held in trust for any husband with whom she might intermarry, if he should survive her, for his life. The testator's daughter married, and was left a widow. She married in 1872 again, and in 1878 was divorced from her second husband on his petition. He married again, and she died in 1882, leaving him alive. The question in the action was whether the second husband was entitled to the life interest.

Warmington, Q.C., and *Rawlins* for the plaintiff.

Cookson, Q.C., and *Bagshawe* for the defendant, the second husband.

FRY, J., held that the second husband was entitled.

Chancery Division.
FRY, J.
Feb. 22.

SMITH *v.* STOTT.

Vendors and Purchasers Act, 1874, *s.* 65—*Conveyancing Act*, 1881, *s.* 65.

This was a summons by a purchaser to have declared that his vendor had failed to make a good title, and to have an order for the return of deposit. An objection to the title was that title was only shown to a long leasehold, on which a rent of 3*s.* a year was reserved. The vendor contended that the rent had no money value within the meaning of section 65 of the Conveyancing Act, 1881, and the property was, therefore, made freehold by statute; and also that there was no jurisdiction under the Vendors and Purchasers Act, 1874, to order the return of deposit.

Warrington for the summons.

Latham for the vendor.

FRY, J., decided that, in the absence of evidence, he could not hold that a rent of 3*s.* a year had no market value; and, secondly, that there was jurisdiction to entertain the summons.

Chancery Division. FRY, J. Feb. 23. } *In re* ST. PAUL'S SCHOOLS, FINSBURY.

Lands Clauses Consolidation Act, s. 80—*Costs—Reinvestment.*

The National Schools of St. Paul's, Finsbury, had been taken compulsorily by the Metropolitan Board of Works. This was a petition to obtain the sanction of the Court for a scheme, and the application of the purchase-money in Court to the proposed scheme. The scheme was referred to chambers; but a question was raised as to the extent of the liability of the Metropolitan Board of Works.

Cookson, Q.C., and *A. G. Allen* for the trustees, who petitioned.

Pownall for the board.

Stirling for the Attorney-General.

E. Ford for the original donors of the property.

FRY, J., ordered the Metropolitan Board to pay the costs, except so far as they should be increased by the settlement scheme.

Chancery Division. PEARSON, J. (for KAY, J.) Feb. 14, 17. } *In re* NORRIS.

Will—Power of Sale—Power of Trustees to sell Part of Property for Improvement of Remainder—Petition for Advice of Court—Lord St. Leonards' Act (22 & 23 *Vict. c.* 35).

The testator A. Norris, by his will, gave certain freehold property at Liverpool to trustees upon trust for his five children, three daughters and two sons; the daughters to take each one-fifth absolutely, the sons as tenants for life only, with remainder after their respective deaths to their children.

The will contained the following power of sale: 'And the testator further empowered the trustees or trustee for the time being of that his will for the purpose of satisfying his debts, or for the purpose of a division of his property, or for any other purpose (but if not for the purpose of satisfying his debts, or for the purpose of a division with the written consent of the major part in number of his said sons and daughters then living and entitled to shares of his said estates), absolutely to sell, &c.'

The will also contained a power to advance grandchildren.

Part of the property consisted of some houses facing a road called Islington, and having forecourts between themselves and the road. The corporation of Liverpool, wishing to widen this road, proposed to pay to the trustees a sum of 7,000*l.* in consideration of the forecourts being thrown into the road; and, as it appeared that, by spendi g 2,000*l.* on the houses, they would let at the same rent without the forecourts, the trustees were anxious to carry out the arrangement; but, having doubts whether they had power to do so under the will, they presented this petition, for the advice of the Court, under Lord St. Leonards' Act.

At the date of the petition, the three daughters and one of the sons were dead. The petitioners represented 11-15ths in interest of the property. The respondent, John Boyd, who was entitled to the remaining 4-15ths, objected to the proposed arrangement; and it appeared that he had instituted a suit for partition of the property.

Rigby, Q.C., and *W. W. Cooper* for the petitioners.

Graham Hastings, Q.C., and *E. S. Ford* for John Boyd.

Byrne for beneficiaries supporting the petition.

PEARSON, J., said that the words 'other purposes' referred to the only other purpose designated in the will—viz. the advancement of grandchildren. The proposed arrangement really amounted to a sale of one portion of the trust estate, in order to raise money for the improvement of the remainder; and, as the will contained no such power, he declined to give the trustees any sanction whatever for what they proposed to do; and he expressed his opinion the more confidently because he understood that the respondent had instituted an action for partition of the estate, which was now pending.

Chancery Division. PEARSON J. (for KAY, J.) Feb. 21. } WHEELWRIGHT *v.* WALKER.

Settled Land Act, 1882, *s.* 38—*Appointment of Trustees for Purposes of the Act—Settled Land Act Rules*, 1882, *Rule* 6.

In this case an order had been made restraining the defendants from proceeding to a sale of the property in dispute (*ante*, p. 24) 'until trustees should have been appointed and notice given.' The plaintiff's solicitors had then asked the defendants' solicitors for an undertaking that they would not make any application for the appointment of trustees under section 38 of the Act without serving him; but this was refused on the ground that, according to Rule 6 of the Settled Land Act rules, he ought not to be served unless by direction of the judge.

This was an *ex parte* application on behalf of the plaintiff for an order directing the defendants to serve the plaintiff with notice of any application for the appointment of trustees.

Hastings, Q.C., for the plaintiff.

PEARSON, J., made the order asked for.

Chancery Division. CHITTY, J. Feb. 23. } WILSON *v.* KIRKWOOD.

Bill of Sale—Rate of Interest—Bills of Sale Act, 1878, *Amendment Act*, 1882 (45 & 46 *Vict. c.* 43), *s.* 9.

The Bills of Sale Act, 1878, Amendment Act, 1882, s. 9, does not require an insertion in the bill of sale of the actual rate at which interest is payable.

Ince, Q.C., *Romer, Q.C.*, *Decimus Sturges*, and *Northmore Lawrence* for the parties.

Chancery Division. PEARSON, J. Feb. 15, 17, 20, 24. } PHILLIPS *v.* HOMFRAY.

'Actio personalis'—Trespass—Damages for wrongful Working of Coal—Damages for Wayleave in respect of Coal over Plaintiffs' Land.

By the decree made in this suit, in March, 1870, inquiries were directed—first, what quantities of coal had been conveyed by the defendants from the plaintiffs'

mines through certain roads or passages on the plaintiffs' property; secondly, what amount, upon the result of that inquiry, ought to be paid by the defendants for royalty, or wayleave, for the use of such roads or passages; and, thirdly, whether a certain farm belonging to the plaintiffs, and the minerals under it, had sustained any, and what, damage, by reason of the manner in which the defendants had worked the coal under the farm. While these inquiries were being proceeded with, one of the defendants died; and his executrix moved that the inquiries might be stayed as against her, on the ground that they were in respect of damages for a trespass or tort, to which the rule *actio personalis moritur cum persond* applied.

Rigby, Q.C., and *Osler* for the motion.

Graham Hastings, Q.C., and *Maclean* for the plaintiffs.

Howard for another party.

PEARSON, J., held that the amount payable under the first two inquiries was not damages as for a personal tort, but rather in the nature of compensation for the use of a wayleave from which the estate of the deceased defendant had derived profit; and that the liability of the deceased, therefore, survived as against his executrix; but that the damages, the subject of the third inquiry, were within the rule above mentioned, inasmuch as the estate of the deceased had not derived any profit therefrom. He therefore refused the motion as to the first two inquiries, but granted it as to the third.

Chancery Division. PEARSON, J. Feb. 24. } PRESTNEY *v.* THE MAYOR, &C., OF COLCHESTER.

Practice—Production of Documents—Place of Production—London Agents—Solicitor on the Record—Discretion of Court.

This was an adjourned summons, upon which the question arose whether the deeds and documents belonging to the defendants should be produced for the inspection of the plaintiffs at the office of the London agents of the defendants' solicitors; or at Colchester, where the office of the defendants' solicitors was situate.

W. Pearson, Q.C., and *H. J. Hood*, for the plaintiffs, argued that the documents ought to be produced at the London office.

Smart and *Eustace Smith*, for the defendants, contended that the proper place for production was the office of the 'solicitor on the record,' viz. the office at Colchester.

PEARSON, J., was of opinion that the proper place for production was ordinarily the office of the London agents. But the Court had a discretion in the matter. In the present case the documents were very numerous and important; some of them were very capable of being lost in the transit from Colchester to London; and the loss of them might be very material to the corporation in future actions, as well as in the present one. He should, therefore, in the exercise of his discretion, order that the production should be at Colchester; but the plaintiffs would have leave to apply at the trial, whether they were successful or not, to be paid the extra costs occasioned to them by the production taking place at Colchester instead of in London.

Queen's Bench Division. Feb. 22. } *Ex parte* CAINE.

Husband and Wife—Conveyance by Married Woman—3 & 4 Wm. IV. c. 74, s. 91.

Cyril Dodd moved for an order, under 3 & 4 Wm. IV. c. 74, s. 91, to enable Mrs. Caine to dispense with the concurrence of her husband in the execution of a conveyance, in which he had refused to join unless part of the consideration money was paid to him; the application being based on the ground that he was 'living apart from his wife.'

It appeared from the affidavits that the parties had been separated for some years, and that the applicant supported herself, though she had occasionally received small sums of money from her husband.

The COURT (HUDDLESTON, B., and NORTH, J.) made the order asked for.

Order granted.

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PONSONBY *v.* HARTLEY.

Practice—Production of Documents—Plaintiffs' Title—Documents likely to support.

Appeal from decision of PEARSON, J., noted fully, *ante*, page 11.

W. Pearson, Q.C., and *W. P. Beale* for the appellants, the defendants in the action.

Robinson, Q.C., and *W. Druce* for the respondents.

Their LORDSHIPS affirmed the decision of the Court below; and dismissed the appeal, with costs.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
LINDLEY, L.J.
March 6.

In re GADD. EASTWOOD *v.* CLARK.

Practice—Administration Decree—Appointment of new Trustee—Discretion of Trustee.

Appeal from decision of BACON, V.C.

The action was to administer the estate of the testator in the cause, who by his will had appointed two trustees and executors, and had vested the power of appointing new trustees in the surviving trustee, his executors or administrators. One trustee was dead.

The plaintiff was the residuary legatee under the will, and the defendant was the surviving trustee.

The usual administration decree had been made.

The plaintiff took out a summons for the appointment of a new trustee in the place of the deceased trustee, and nominated a Mr. Eastwood.

The defendant then took out a similar summons, and nominated a Mr. Whiteley. It was not alleged that either nominee was an unfit person to be trustee.

The Vice-Chancellor, in accordance with the practice in his chambers, appointed the nominee of the plaintiff.

The defendant appealed.

Millar, Q.C., and *P. B. Abraham* for the appellant.

Hemming, Q.C., and *G. Williamson* for the respondent.

Their LORDSHIPS held that it was now the settled practice of the Court, even after decree, not to interfere with trustees in the exercise of their discretionary powers when properly exercised. The usual course was for the donee of the power to nominate a person to be trustee, and for the Court, if satisfied with the fitness of the person, to sanction the appointment. If the Court was dissatisfied, it refused to sanction, and then the donee must nominate another person. The order of the Court below must be discharged, and Mr. Whiteley must be appointed the new trustee. Costs to be costs in the action.

HIGH COURT OF JUSTICE.

Crown Case Reserved. March 3. } REGINA *v.* BROWN.

Coram LORD COLERIDGE, C.J., POLLOCK, B., HUDDLESTON, B., MANISTY, J., and STEPHEN, J.

Attempt to commit Murder—24 & 25 *Vict. c.* 100, *ss.* 14, 15.

Case reserved by STEPHEN, J.

The prisoner was convicted on an indictment which charged that the feloniously did attempt to discharge certain loaded arms at one S. with intent to murder.

It was proved that B. had a quarrel with S. On the day in question he went to S.'s house, and desired to speak with him in private. S. told B. to go into the back shop for that purpose. B., as he went into the shop, was observed to draw from his pocket a loaded revolver. C. immediately snatched it from his hand, and he was arrested by S. and C.

The learned judge held, on the authority of *Rex* v. *St. George*, J. C. & P. 483, that there was no evidence of an offence under section 14 of 24 & 25 Vict. c. 100, which punishes several different ways of attempting to commit murder; one of which is, 'whosoever shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person with intent to commit murder;' but that there was evidence under section 15.

The question reserved for the opinion of the Court was whether the indictment sufficiently charged an offence under section 15 of 24 & 25 Vict. c. 100, which punishes every one who, 'by any means other than those specified in any of the preceding sections of this Act, attempts to commit murder.'

Poland appeared for the Crown.

No counsel appeared for the prisoner.

HELD that the conviction was wrong, because section 15 dealt with attempts to murder which were not *ejusdem generis* with those in section 14.

Conviction quashed.

Chancery Division. FRY, J. Feb. 20. } WILSON *v.* DE COULON.

Practice—Evidence—Commission—Order of April, 1880 *—Form G.* 11.

In this case the Form of Order given in Schedule G. to the Rules of April, 1880, was deviated from to allow a single commissioner appointed to take evidence abroad to administer the oath to himself.

A. Young, for the defendant, who obtained the order.

Chancery Division. FRY, J. March 1. } *Re* HARRALD. WILDE *v.* WALFORD.

Set-off—Costs—Solicitor's Lien.

The plaintiffs were on petition appointed new trustees of the will of Thomas Harrald. On the occasion of their appointment the Court ordered payment of costs to the defendant Walford. In the action of *Wilde* v. *Walford* the trustees afterwards recovered from Walford possession of certain trust premises and judgment for mesne profits and costs. This was a summons by the trustees to be allowed to set off the taxed costs against the sum recovered in the action.

Oswald for the summons.

Swinfen Eady, contrà.

FRY, J. refused to allow a set-off, on the ground that the Court would not interfere with a solicitor's lien for his costs.

Chancery Division. FRY, J. Feb. 20, 21. March 3. } VISCOUNT EXMOUTH *v.* PRAED.

Will — Construction — Heir Looms — Defeasance — Uncertainty.

This was an action to administer the trusts of certain chattels in the nature of heirlooms, under the will of the second Viscount Exmouth. The trusts of the chattels were that they should go with the title so far as the rules of law and equity would allow, so that no persons living at the testator's death should take an absolute interest, 'and so that no person shall acquire an absolute interest in the same till the expiration of twenty-one years after the decease of all such persons as shall be in existence at the time of my decease, and afterwards attaining the said title.'

Everitt, Q.C., and *Vaughan Hawkins* for the plaintiff, the present viscount.

Cookson, Q.C., and *Coltman* for the heir presumptive.

Praed for the trustees.

FRY, J., held that the condition set out above was void for uncertainty in operation; and that the present viscount, the first holder of the title born after the decease of the testator, took the chattels absolutely.

Chancery Division. FRY, J. March 3. } *In re* THE ALEXANDRA PALACE COMPANY. *Ex parte* GOODSON.

Company—Winding up—Contributories' Rights 'inter se'—Companies Act, 1862, *s.* 109—*Jurisdiction.*

An application was made, by the official liquidator of the above company, under section 165 of the Companies Act, 1862, to obtain an order on certain directors (the present applicants), that they should refund dividends paid on preference shares, on the ground that those dividends had been paid out of capital. The dividends were paid partly out of money received in respect of fire insurance, and partly out of money advanced for the purpose by Messrs. Kelk & Lucas, and the London Financial Association. Messrs. Kelk & Lucas and the London Financial Association had financed the Alexandra Company, and each held a large portion of the preference and other shares, and each proved for large sums in the winding up, including the sums advanced for payment of dividends. An order was made on that

application, on May 6, 1882, by FRY, J., that the directors should refund the sum of money by which the assets had been reduced by the payment of dividends paid out of capital, 51 Law J. Rep. Chanc. 655.

This was a summons by the directors to have (1) proof of so much of the debts of Messrs. Kelk & Lucas, and the London Financial Association as related to the advances for the payment of dividends expunged; (2) for indemnity from Messrs. Kelk & Lucas and the London Financial Association; (3) that Messrs. Kelk & Lucas and the Financial Association might be ordered to repay to the liquidator the dividends they had received on their preference shares; (4) a declaration that Messrs. Kelk & Lucas and the Financial Association were not entitled to receive any payment out of the sums ordered to be paid by the directors; (5) that Messrs. Kelk & Lucas and the Financial Association might be ordered to repay to the applicants any sums paid to the former out of the sums paid to the latter; (6) that the order of May 6 might be enforced only to the extent of dividends payable to other creditors than Messrs. Kelk & Lucas and the Financial Association; (7) that all dividends payable to Messrs. Kelk & Lucas and the Financial Association might be refunded; and (8) leave to use the name of the liquidator in proceeding against Messrs. Kelk & Lucas and the Financial Association.

Cozens-Hardy, Q.C., Northmore Lawrence, and *Dauglish* for the summons.

Glasse, Q.C., and *Speed* for the liquidator.

Cookson, Q.C., Everitt, Q.C., and *Medd* for the London Finance Association.

Edward Beaumont for Kelk & Lucas.

FRY, J., held that, as the summons was not for the purpose of adjusting the rights of contributories, *inter se, qua* contributories, he ought not in the winding-up to make the order asked.

Chancery Division. Kay, J. March 3. } *In re* CORSELLIS. LAWTON *v.* ELWES.

Practice—Production of Documents—Next Friend of Infant Plaintiff—Rules of Court, 1875, *Order XXXI., Rule* 12*—Next Friend not a 'Party to the Action.'*

This was an administration action by an infant plaintiff suing by three next friends. There was an application pending by a fourth next friend for the removal of two of the next friends on the record. For the purposes of that application the fourth next friend took out summonses for the production of documents, under Order XXXI., Rule 12, by the two next friends, whom he desired to remove.

Kekewich, Q.C., Bardswell, Graham Hastings, Q.C., Swinfen Eady, W. Pearson, Q.C., and *Lambert* appeared.

KAY, J., held that the next friends were not parties to the action within the meaning of Order XXXI., Rule 12; and that the summonses were misconceived, and must be dismissed. The proper course in such a case was to proceed by *subpœna duces tecum.* The practice under Order XXXI., Rule 12, ought to be confined to persons who were parties to the action in the strict and proper sense of the term.

Chancery Division. Kay, J. March 6. } ANGUS *v.* M'LACHLAN.

Innkeeper—Lien upon Goods of Guest for unpaid Bill—Taking of Security—Waiver—Goods damaged during Detention—Counter-claim.

This was an action by the plaintiff, who was an innkeeper, to recover from the defendant the amount of his bill.

In November, 1880, the defendant, who was trying to obtain a settlement of a claim he had against the owners of a ship, to certain shares of which he was entitled, put up at the plaintiff's hotel. In consequence of the non-settlement of his claim against the shipowners, the defendant was unable to pay his bill at the hotel. On March 8, 1881, he gave the plaintiff the following letter:—

Dear Sir,—I hereby charge the bill of sale on the ship Leonidas, now in the hands of Messsrs. Phelps, Sidgwick, & Biddle, with the payment of any account due or to become due from myself to you.

After this, the defendant stayed in the hotel till June, 1881, when the plaintiff, not being able either to raise money on the letter, or to obtain payment of his bill, gave the defendant notice that he must pay or leave the house. The defendant still being unable to pay, the plaintiff shut up his room and detained goods belonging to the defendant, who left the house. In September, 1881, the plaintiff brought this action, asking that the amount due to him from the defendant (83*l.* 8*s.* 11*d.*) might be declared to be a charge upon the defendant's shares in the ship in question, and the goods were delivered to a receiver in the action. The defendant alleged that during the detention of his goods by the plaintiff they had become damaged, owing to the neglect of the plaintiff to take proper care of them. He accordingly put in a counter-claim claiming the right to set off the damage so sustained by him against the claim of the plaintiff. Two questions now arose—first, whether the plaintiff's lien upon the goods of the defendant was destroyed by his acceptance of the letter as security for the payment of his bill; and, secondly, whether the plaintiff was guilty of that amount of wilful negligence which was necessary to make him liable for the damage to the defendant's goods.

Graham Hastings, Q.C., and *Greenwood* for the plaintiff.

Yate Lee for the defendant.

KAY, J., after referring to the cases of *Cowell* v. *Simpson,* 16 Ves. 275; *Balch* v. *Symes,* Turner & Russ. 87, and *Hewison* v. *Guthrie,* 5 Law J. Rep. C.P. 283; 2 Bing. N. C. 755, said that, in his opinion, the true state of the law was that the mere taking of a security did not of itself destroy the lien; but that, in order to destroy it, there must be something in the facts of the case or in the nature of the security which was inconsistent with the retention of the lien, and therefore destructive of it. Here the lien was within the pro-

visions of the Innkeepers Act, 1878 (41 & 42 Vict. c. 38), which gave an innkeeper not merely a passive lien, but, in certain cases, the active right to sell the goods of his guest. These were rights which it was not probable that an innkeeper would lightly waive, and in this case there was nothing in the facts or in the nature of the security inconsistent with the continuance of the lien which the plaintiff had before the security was given. On the other point, he said, the general law was that a bailee was not bound to exercise more care in the keeping of the goods bailed to him than he was as to his own. On the evidence, he was of opinion that the defendant had not shown that his goods had been damaged in consequence of any negligence on the part of the plaintiff. He therefore gave judgment for the plaintiff, dismissing the counter-claim.

Chancery Division.
CHITTY, J.
Feb. 19.
} WALLIS *v.* JACKSON.

Practice—Pleading—Endorsement on the Writ—Motion on Admissions in Pleading—Judicature Act, 1873, *s.* 100—*Rules of Court*, 1875, *Order II., Rule* 1: *Order XL., Rule* 11.

The endorsement on a writ is not a 'pleading' within the terms of Order XL., Rule 11, so as to entitle a plaintiff to move for judgment without the consent of the defendant on admissions in the pleading, although the defendant admits the plaintiff's claim, and has given notice that he does not require a statement of claim.

Chancery Division.
CHITTY, J.
March 3.
} *In re* GODFREY'S TRUSTS.

Vesting Order—Copyholds—Trustee Act, 1850, *ss.* 15 *and* 28.

Petition.

When a bare trustee of copyholds has died intestate and without an heir, the Court has jurisdiction, under the combined operation of sections 15 and 28 of the Trustee Act, 1850, to make an order vesting the copyholds in the person beneficially entitled.

St. John Clerke for the petitioner.

Chancery Division.
CHITTY, J.
March 5.
} PENRICE *v.* WILLIAMS.

Practice—Reference to an Arbitrator—Finality of Order of Reference—Jurisdiction—Rules of Court, 1875, *Order XXXI., Rule* 12.

An order having been taken by consent, referring to action and all matters in difference between the parties to an arbitrator, the plaintiff afterwards, under Order XXXI., Rule 12, took out a summons for an affidavit and inspection of documents.

HELD that there was no longer before the Court any matter in question as to action within the meaning of the rule.

D. Benson and *Brynmôr Jones* for the parties.

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Feb. 22.

Ex parte WALKER. *In re* M'HENRY.

Bankruptcy — Liquidation Petition — Adjudication — Bankruptcy Act, 1869, *ss.* 125, 126.

The debtor filed a liquidation petition in August, 1879. The first meeting of creditors was adjourned, an opinion being expressed that it was inexpedient, in the interest of the creditors, that the debtor's statement of affairs should be read. At the adjourned meeting a further adjournment was resolved upon, and this was done several times without any resolutions for liquidation by arrangement or composition being passed. The last adjournment being to March 28 next, three creditors applied to the Court for an adjudication, under the Bankruptcy Act, 1869, s. 125, subs. 12. The registrar dismissed the application on the ground that, no resolution having been passed for a liquidation or composition, the Court had no jurisdiction, under section 12, to make the order. The creditors appealed.

Winslow, Q.C., and *Sidney Woolf* for the appellants.

E. Clarke, Q.C., and *Finlay Knight* for the debtor.

Their LORDSHIPS held that the Court had power to make the adjudication, under sections 125 and 126, even although no resolution had been passed for a liquidation or composition.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
LINDLEY, L.J.
Feb. 22.

Ex parte ROBINSON. *In re* ROBINSON.

Bankruptcy Petition — Adjudication — Prior Scotch Sequestration — Discretion of Court.

In May, 1880, the debtor, who had previously carried on business in England, went to reside in Scotland. In July, 1877, an English creditor had commenced an action against him to recover a debt of 26*l.*, and in February, 1882, judgment was signed for debt and costs. Meanwhile, on August 6, 1881, a Scotch decree was made against the debtor, sequestrating all his estate in Scotland and elsewhere. In June, 1882, a debtor's summons was issued in England for the judgment debt, and, this not being complied with, a bankruptcy petition was presented, upon which the registrar adjudicated the debtor a bankrupt, although the proceedings under the Scotch sequestration had not closed, and the debtor had not obtained his discharge. It appeared that he had no assets in England, and had contracted no debts there since the sequestration.

The debtor appealed.

Wyatt Hart for the appellant.

B. Houghton for the petitioning creditor.

J. E. Linklater for the Scotch trustee.

Their LORDSHIPS held that the Court had a discretionary jurisdiction to make the adjudication, notwithstanding that the Scotch sequestration was unclosed. Under the circumstances of there being no assets in England, and no debts contracted there since the sequestration, they thought the adjudication should not have been made.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
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March 1.

Ex parte IZARD. *In re* BUSHELL.

Bankruptcy — Liquidation — Receiver and Manager — Charges — Taxation — Moneys advanced without Authority of Court — Right to Indemnity — Bankruptcy Rules, 1871, *Rule* 5.

The debtor, Bushell, carried on business in London and about twenty other places in England and Scotland. On September 8, 1882, he filed a liquidation petition, and a receiver and manager was appointed. The receiver, without having obtained from the Court any

authority to advance money, purchased goods on credit, and appointed travellers to inspect the various shops. On the appointment of a trustee in the liquidation, the receiver presented an account, claiming 178*l.* for his own and the travellers' expenses and salaries, and 558*l.* for goods purchased for the purpose of carrying on the business. The trustee objected to pay these items, unless they were taxed under the Bankruptcy Rules, 1871, Rule 5.

The registrar ordered the trustee personally to pay the 178*l.* to the receiver, and the 558*l.* to the persons who had supplied the goods.

The trustee appealed.

Cooper Willis, Q.C., and *F. Cooper Willis* for the appellant.

Winslow, Q.C., and *Sidney Woolf* for the respondent.

Their LORDSHIPS held that the charges of the receiver for disbursements out of pocket—such as travelling expenses and assistants' salaries—were liable to taxation under rule 5. As to the 558*l.*, the receiver was entitled to indemnity out of the debtor's estate; but the trustee should not have been ordered personally to pay the amount. The only order which could be made against the trustee was that he should pay out of the available assets in his hands. The proper course for the receiver to have adopted before advancing the money would have been to apply to the Court for authority to do so, and the Court would have allowed him interest at 5 per cent. on the amount to be advanced, and given him a charge on the assets for the same.

Court of Appeal.
BRETT, L.J.
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CASTELLAIN *v.* PRESTON AND OTHERS.

Fire Insurance—Insurance by Vendor of House agreed to be sold—Loss by Fire before Completion of Purchase—Receipt by Vendor of both Purchase-money and Compensation from Insurance Company—Right of Insurance Company to recover from Vendor Money so paid.

Appeal by the plaintiff from the judgment of CHITTY, J., on further consideration.

In 1878 the defendants agreed to sell to one Rayner a piece of land and a house for 3,100*l.* Part of the purchase-money was paid at the time; May, 1879, being fixed for the payment of the remainder and the completion of the contract. Before the agreement the house was insured against loss by fire by the vendors with an insurance company, of which the plaintiff was chairman, but the agreement for sale contained no reference to the insurance. After the date of the agreement for sale, but before the date named for completion, the house was damaged by fire, and the insurance company paid to the defendants a sum of 330*l.* In 1879 the purchaser completed the purchase, and paid to the defendants the balance of the purchase-money. The plaintiff, as chairman of the insurance company, brought an action against the vendors to recover from them the sum of 330*l.* which the company had paid to them as compensation.

CHITTY, J., gave judgment for the defendants.

The plaintiff appealed.

Russell, Q.C., and *Tobin* for the plaintiff.

Gully, Q.C., and *W. Kennedy* for the defendants.

Their LORDSHIPS allowed the appeal; holding that, as a contract of insurance is a contract of full indemnity and nothing more, and, as the defendants had received the full amount of the purchase-money as well as the insurance money, the insurance company were entitled to recover the amount which they had paid to the defendants as compensation for the damage occasioned by the fire.

HIGH COURT OF JUSTICE.

Chancery Division.
FRY, J.
Feb. 8.

In re THE MANSTON COAL COMPANY.

Company—Winding up—Poor Rates—Proof—Distress—Companies Act, 1862, s. 123.

This was an application to restrain a distress for poor rates on goods of a company in voluntary liquidation.

There was evidence that the company was insolvent.

Byrne for the liquidator.

Beale, for the overseers seeking to distrain, contended that poor rates could only be obtained at law by the statutory remedy of distress; there was no debt to the overseers which could either be sued for or proved for in a winding up.

FRY, J., held that the rate was one of the liabilities to satisfy which the assets had to be applied; and, therefore, the distress would be restrained.

Chancery Division.
FRY, J.
March 5, 6, 12.

BOSWELL *v.* CONKS.

Solicitor and Client—Sale—Sanction of Court.

Conks, one of the defendants to this action, was solicitor to an executor, the sole defendant in a creditors' administration suit, and had an arrangement to share costs with the plaintiff's solicitor. Part of the assets belonging to the estate that was administered consisted of a life interest. The life interest was put up for sale by auction, and Conks obtained the leave of the Court to bid at the auction. The auction was abortive. Conks and Bunyan, another defendant to this action, immediately applied to be allowed to buy by private contract, and ultimately bought under the sanction of the Court. This was an action to upset the sale on the ground of misrepresentation and concealment. A question of law arose as to whether Conks, after he had obtained the leave of the Court to bid, was in the same position as a stranger in buying; or whether he was in such a fiduciary position as bound him to disclose to the Court material facts within his knowledge affecting the value of the life interest.

Sir Hardinge Giffard, Q.C., *Ch. Russell, Q.C.*, *Cookson, Q.C.*, *Crossley, Q.C.*, *H. M. Giffard, Q.C.*, and *Langworthy* for the plaintiff.

Dewey, Q.C., and *Cozens-Hardy, Q.C.*, *The Solicitor-General* (*Sir Farrer Herschell*) and *Northmore Lawrence*, *The Attorney-General* (*Sir Henry James, Q.C.*) and *Phipson Beale*, *H. Matthews, Q.C.*, and *Chadwyck Healey*, *Rigby, Q.C.*, and *Buckley*, *Higgins, Q.C.*, and *Stirling*, *Merewether, Q.C.*, and *Knipe*, and *Whitehorne, Q.C.*, and *Phipson Beale* for the various defendants.

FRY, J., held that Conks was in the same position as a stranger.

Chancery Division. Kay, J. Feb. 27, 28. March 7. — Follett *v.* Pettman.

Will—Codicil—Confirmation—Revocation.

Testator, by his will dated February 27, 1875, after making certain specific bequests, gave all his real and personal estate, not thereinbefore otherwise disposed of, to trustees upon trust to pay an annuity to his widow, and subject thereto upon trust for his children, including the plaintiff, Walter Follett, in equal shares.

In February, 1878, he made a codicil by which he revoked a legacy given to his daughter Mary and increased a legacy given to his daughter E., and the codicil ended thus: 'In all other respects I confirm my said will.'

In November, 1878, he made a second codicil, which commenced: 'This is a codicil to the last will and testament of me, George Follett;' and, after reciting that he was desirous of 'altering' the residuary devise contained in his said will, and of making the specific devise thereinafter contained, he devised a certain house to his son Walter and to Charlotte Pettman in fee as tenants in common; and the codicil concluded: 'And in all other respects I hereby ratify and confirm my said will.'

He afterwards made a third codicil, beginning: 'This is a codicil to the last will of me, George Follett, such will bearing date on or about February 27, 1875;' by which, after reciting a promise made several years before to that effect, he directed his executors to grant to his daughter-in-law, Louisa, an underlease of a certain house, and gave to his wife a legacy of 50*l.* in addition to the benefit which she derived from his 'said will;' and the codicil concluded: 'In all other respects I confirm my said will, except as altered by a said codicil thereto made in 1878, whereby I revoked a legacy given to my daughter Mary.'

This was a special case, raising the question whether the effect of this third codicil was to destroy the devise contained in the second codicil.

Ingle Joyce for the plaintiff.

Kekewich, Q.C., E. S. Ford, and *Ernest Witt* for the defendants.

Kay, J. (March 7), held that the words of confirmation used by the testator, in his third codicil, must be read as meaning that he did not intend to alter his general testamentary disposition further than by making the gifts contained in that codicil, and that no intention to revoke the second codicil was shown with sufficient clearness to enable the Court to reject the devise thereby made.

Chancery Division. Kay, J. March 8. — Evans *v.* Evans.

Partition—Sale—Partition Act, 1868, *ss.* 3, 5—*Pleadings—Duty of Plaintiff claiming Sale under Section* 3 *to show same on his Pleading.*

This was an action for partition or sale of a copyhold messuage and about eleven acres of land. The plaintiffs were entitled to four-tenths, and the defendant to the remaining six-tenths. The statement of claim contained no allegation that a sale would be more beneficial than a partition, so as to bring the case within section 3 of the Partition Act, 1868 (31 & 32 Vict. c. 40). The defendant, by his statement of defence, claimed the right to purchase the plaintiffs' shares at a valuation, under section 5. There was no further evidence as to the character of the property; and the question was whether, on the pleadings, the plaintiffs had made out a case for a sale under section 3.

Stallard for the plaintiffs.

Rigby, Q.C., and *Hadley* for the defendant.

Kay, J., offered to give the plaintiffs leave to amend by alleging that a sale was more beneficial than a partition, and to let the case stand over so as to enable the parties to bring that issue before the Court; but, upon this offer being declined, he gave judgment, holding that, upon the pleadings, he must treat the case as not coming within section 3, but within section 5, so that the defendant was entitled to purchase the plaintiffs' shares. A plaintiff in a partition action, if he meant to make a case under section 3, ought clearly to show the same on his pleading, in order that the defendant might be apprised that he would have to meet that issue, and not be taken by surprise at the hearing.

Chancery Division. Kay, J. March 8. — *In re* Knowles. Dodson *v.* Turner.

Contempt of Court—Attachment—Debtors Acts, 1869 *and* 1878—*Defaulting Trustee—Discretion of Court.*

This was a motion for the committal of the respondent, a defaulting trustee. He was a member of a firm, and he had lent the trust moneys to his firm, who had traded with them, lost them, and become bankrupt. An order had been made against him to pay the amount due from him into Court; but, in consequence of his being an uncertificated bankrupt, the order could not be enforced. He had now obtained his discharge; but he had not paid the money. His defence was that he had no means wherewith to pay. It was proved that he was living in a house rented at 70*l.* a year; but he alleged that he was living on the remnants of his wife's fortune and on the kindness of friends.

O. L. Clare for the appellant.

Dunning for the respondent.

Kay, J., said that the Debtors Acts were intended for the punishment of defaulting trustees, and to deter other trustees from doing the like. The case of a trustee who put the trust moneys into his own pocket was clearly one in which the Court ought to exercise its discretion by inflicting the punishment. He therefore ordered that a writ of attachment should issue.

Queen's Bench Division. March 6, 8. — Clark and Others (Petitioners) *v.* Wallond (Respondent).

Maidstone Borough (Stone Street Ward) Municipal Election, 1882—*Municipal Election Petition—Time for Delivery of Particulars—Amendment of Petition—Charge of Treating added after twenty-one Days—Municipal Corporations Act,* 1882, *s.* 100, *subs.* 4.

Appeal from order of Hawkins, J., that the petitioners do deliver to the respondent particulars of the acts of bribery relied on fourteen days before the day of trial.

H. F. Dickens, for the petitioners, moved that the order be varied by substituting seven days for fourteen.

E. Morten for the respondent.

The COURT (GROVE, J., LOPES, J., and MATHEW, J.) held that, in the absence of exceptional circumstances, seven days was the proper time, following *Lenham and Others* v. *Barber*, W. N., February 17; and varied the order accordingly.

Appeal allowed; costs to be costs in the petition.

In the same case,

Appeal from an order of LOPES, J., giving the petitioners leave to amend their petition, after the twenty-one days had elapsed within which a petition can be filed, by adding the words 'and treating.' The question turned on the Municipal Corporations Act, 1882, s. 100, subs. 4, and s. 88, subs. 4.

E. Morten, for the respondent, cited *Maude* v. *Lowley*, 48 Law J. Rep. C.P. 103; L.R. 9, C.P. 167.

H. F. Dickens, for the petitioners, cited *Pickering* v. *Startin*, 28 L.T. (N.S.) 111; *Aldridge* v. *Hurst*, 45 Law J. Rep. C.P. 431; L.R. 1, C.P. 410.

Cur. adv. vult.

March 8.—The COURT held that the amendment should not have been made after twenty-one days, following *Maude* v. *Lowley*.

Appeal allowed; costs to be costs in the petition.

Queen's Bench Division. March 8. } RICHARDS *v.* MAY.

Building Contract—Certificate of Surveyor as to Extras—Extras to be paid at Prices fixed by Surveyor—Certificate of Surveyor conclusive.

This was a special case stated by an official referee, to whom the issues in the action had been referred, in order to obtain the opinion of the Court as to whether a certificate given by the surveyor named in a building contract was conclusive against the parties to the contract in respect of extras and omissions.

The plaintiff, a builder, contracted to build for the defendant two villas in accordance with certain plans and specifications, prepared by S. J. Lethbridge, for 3,525*l.*

Clause A. of the contract was as follows: 'All extras or additions, payment for which the contractor shall become entitled to under the said conditions, and all deductions which the proprietor shall become entitled to, shall be respectively paid or allowed for at the prices as shall be fixed by Mr. S. J. Lethbridge, the surveyor appointed by the proprietor.' Among the conditions was the following: '15. The contractor to be paid on the certificate of surveyor, at the surveyor's discretion, during the progress of the works in payments on account, at the rate of 85 per cent. value of works executed, and the balance of such contract to be paid at the completion of works to the surveyor's satisfaction.'

The surveyor, after the work was completed, gave a final certificate that the plaintiff was 'entitled to receive the sum of 875*l.* in settlement of contract, and for extras and omissions;' and the certificate contained in detail the items of extra work measured and valued, and 'omissions measured and valued.'

The action was brought to recover the balance due upon the building contract, as shown by the surveyor's certificate; and the defendant alleged that the surveyor had no authority to decide what were extras and omissions, and that his certificate was, in respect of those items, not binding on the defendant.

Velverton for the plaintiff.

S. Woolf for the defendant.

The COURT (CAVE, J., and DAY, J.) decided in favour of the plaintiff; holding that, as there was no clause in the contract providing any other mode of determining what were extras and omissions; and, as the surveyor was empowered to fix the prices at which extras and omissions should be allowed for, the parties must be taken, by necessary implication, to have agreed that the surveyor should determine whether the items appearing in his certificate were properly extras and omissions. His certificate was, therefore, conclusive.

Queen's Bench Division. March 8. } FULLER *v.* ALFORD.

Church and Clergy—New Parishes Acts, 1843 *and* 1856 *—Right of Vicar of new Parish in respect of Marriages of his Parishioners—4 Geo. IV. c. 76, s. 2—Separate Parish for Ecclesiastical Purposes—District Churches.*

Special case, raising the question whether the vicar of the original parish out of which a new parish has been created under 19 & 20 Vict. c. 104 can marry in his church, and take the fees in respect of the solemnisation of marriage of parishioners of the new parish. By section 14, when the solemnisation of marriages is authorised in any church to which a district belongs, such district shall become a separate and distinct parish for ecclesiastical purposes, such as is contemplated in section 15 of the earlier Act, 6 & 7 Vict. c. 37. That section makes it lawful to publish banns and solemnise marriages in the church of a district constituted under the Act, and provides that the several laws, statutes, and customs in force relating to the publication of banns and to the performance of marriages, shall apply to the church of such new parish. The Act of 4 Geo. IV. c. 76, then and still in force, requires that banns shall be published in the church belonging to such parish wherein the persons to be married shall dwell.

The plaintiff is the vicar of a district church, whose district had been carved out of the defendant's parish, and the defendant had received fees in respect of the solemnisation of marriages in his own church of persons who were parishioners of the plaintiff resident in the new district.

The plaintiff argued in person.

Jeune for the defendant.

The COURT (CAVE, J. and DAY, J.) gave judgment for the plaintiff; holding, upon the true construction of the New Parishes Acts, creating the districts separate and distinct parishes for ecclesiastical purposes, that the banns of the parishioners of the new parish must be published in the new church, and not in the old; and that the solemnisation of marriages in a church is an ecclesiastical purpose such as was contemplated by section 15 of 6 & 7 Vict. c. 37; and that, consequently, the plaintiff's was a distinct and separate parish in respect of the publication of banns of matrimony and the solemnisation of marriages for persons dwelling in his parish.

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Court of Appeal.
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March 3.

REGINA *v.* FOOTE.

Judgment in a criminal Matter—Appeal from—Jurisdiction of Court of Appeal.

This was an application on behalf of Foote and another prisoner, by way of appeal against a refusal of the Divisional Court to discharge an order of NORTH, J., refusing the prisoners' application to admit them to bail.

The prisoners were tried on March 1 for publishing blasphemous libels in the *Freethinker*, the jury being unable to agree; and, having been discharged, North, J., appointed March 5 for a fresh trial, and, on March 2, refused the application for bail, as above stated. The application, by way of appeal, to the Divisional Court was refused for want of jurisdiction.

Cluer, for the prisoners, argued that the admitting to bail was not a criminal proceeding, and referred to *Regina* v. *Weil*, 9 L. R. Q.B. Div. 701.

JESSEL, M.R., said that the point to be decided was, whether the latter part of section 47 of the Judicature Act, 1873—which enacted that 'no appeal shall lie from any judgment of the High Court in any criminal cause or matter save for some error of law apparent upon the record'—was general. That had been decided in the affirmative in *Regina* v. *Steel*, 2 L. R. Q.B. Div. 37; and he was of opinion that the word 'judgment' in that section was used, not in the technical sense of final judgment, but in the more general sense; and that the order of North, J., was a judgment in a criminal matter. The Court, therefore, had no jurisdiction to entertain the application.

BAGGALLAY, L.J., and LINDLEY, L.J., concurred.

Court of Appeal.
JESSEL, M.R.
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March 8.

Ex parte BLAIBERG. *In re* TOOMER.

Bankruptcy—Unregistered Bill of Sale—Bankruptcy of Grantor—Execution against his Goods void as against Trustee—Extent of Avoidance of unregistered Bill of Sale—Bills of Sale Act, 1878, *s.* 8.

The appellant, the holder of an unregistered bill of sale, before the filing of a bankruptcy petition, on which the grantor of the bill was adjudicated bankrupt, took possession of the goods comprised in the bill of sale. The sheriff, however, immediately before the taking such possession, had seized the same goods on behalf of an execution creditor. The execution was held to be avoided by the doctrine of the relation back of the trustee's title to an act of bankruptcy which had been committed before the levy of the execution. The execution, being avoided as against the trustee in bankruptcy, was held not to affect the right of the holder of the bill of sale, who was held entitled to the goods as against the trustee.

The true meaning of section 8 of the Act of 1878 avoiding unregistered bill of sale against an execution creditor is that, to the extent of the execution, but no further, the bill is to be avoided.

A. Reed for Blaiberg, the bill holder.

Cooper Willis, Q.C., and *Whiteway* for the trustee.

Court of Appeal.
JESSEL, M.R.
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} ROSE *v.* ROSE.

Separation—Deed of—Covenant not to sue for past Misconduct—Subsequent Adultery.

Appeal from a decision of HANNEN, Sir J., dismissing a petition by the wife for a dissolution of marriage, she having by a separation deed covenanted not to sue for the past cruelty of her husband. The husband had, since the date of the deed, committed adultery, but no subsequent cruelty was proved. The case is reported 51 Law J. Rep. P. D. & A. 79.

The wife appealed.

Dr. Tristram, Q.C., and *Barnard* for the appellant.

C. A. Middleton for the husband.

Their LORDSHIPS affirmed the decision of the President. The correctness of the rule stated to prevail in the Probate Division, according to which condonation of prior adultery was held to be always conditional and not final, questioned by Jessel, M.R., as being inconsistent with the terms of the Divorce Act. Appeal dismissed, without costs; their lordships holding that the appeal was not vexatious.

Court of Appeal.
JESSEL, M.R.
COTTON, L.J.
LINDLEY, L.J.
March 16.
} DUTTON *v.* THOMPSON.

Voluntary Settlement—Costs of Trustee—Contract for—Appeal for Costs only.

Appeal from a decision of the vice-chancellor of the County Palatine of Lancaster, setting aside a voluntary settlement, and making the defendant, the trustee, pay the costs.

The trustee appealed.

Kekewich, Q.C., and *Clare* for the appellant.

Rigby, Q.C., and *Dr. Pankhurst, contrà.*

Their LORDSHIPS affirmed the decision of the vice-chancellor, holding, upon the evidence of the facts of the case, that the settlement, although made honestly with the intention of benefiting the plaintiff, the settlor, had not been fully explained to the settlor before execution of it by him; and that, the settlement having been set aside, the contract of trusteeship, under which a trustee is held to contract for payment of his costs, charges, and expenses, could not be treated as existing; and that, therefore, the trustee could not appeal against that part of the vice-chancellor's order which made him liable to pay costs, such costs being within the discretion of the vice-chancellor, and within section 47 of the Judicature Act, 1873; and the case of *Turner* v. *Hancock* (51 Law J. Rep. Chanc. 517; L. R. 20 Chanc. Div. 303) did not apply.

Court of Appeal.
JESSEL, M.R.
COTTON, L.J.
BOWEN, L.J.
March 17.
} ROBINSON *v.* OMMANNEY.

Bankruptcy Act, 1861, *ss.* 153, 164—*Proof—Contingency—Mortgage—Ancillary Covenant.*

Appeal from a decision of KAY, J., overruling a demurrer of the defendant. The case is fully reported 51 Law J. Rep. Chanc. 894.

The defendant appealed.

Cookson, Q.C. (*J. E. Wood* with him), for the appellant.

Cozens-Hardy, Q.C., and *Finch* were not called upon.

Their LORDSHIPS dismissed the appeal, agreeing both in the reasoning and the conclusion of Kay, J.

Court of Appeal.
LORD COLERIDGE, L.C.J.
BRETT, L.J.
BOWEN, L.J.
March 16, 19.
} CHAMBERLAIN *v.* BOYD.

Oral Slander—Words not actionable without special Damage—Remoteness.

Appeal by the defendant from the judgment of FIELD, J., on a demurrer to a statement of claim.

The statement of claim alleged that the plaintiff had been a candidate for election at a club, and that he had been rejected; that a proposal was made to alter the mode of election to the club; that the defendant, a member of the club, falsely and maliciously spoke of the plaintiff certain defamatory words, not actionable in themselves, by reason of which he 'induced, or contributed to induce, a majority of the members of his club to retain' certain regulations as to election under which the plaintiff had been rejected, and thereby prevented the plaintiff from again seeking to be elected to the said club, 'whereby he lost the advantage which he would have derived from again being a candidate, with a chance of being elected.'

The defendant demurred; but Field, J., disallowed the demurrer.

The defendant appealed.

Russell, Q.C., and *Houghton* for the appellant.

The *Attorney-General* (*Sir H. James*) and *Crump* for the plaintiff.

Their LORDSHIPS allowed the appeal; holding that there was no allegation of any sufficient special damage; that the alleged damage was not the natural and reasonable consequence of the words spoken; and, therefore, that the action was not maintainable, and that the demurrer must be allowed.

HIGH COURT OF JUSTICE.

Chancery Division.
FRY, J.
March 12.
} *Re* HOPKINS. WILLIAMS *v.* HOPKINS.

Bankruptcy Order, 1870, *subs.* 99, 100.

Secured creditors for a debt of 400*l.* and interest, sent in a claim to prove in an action for the administration of an insolvent estate. The plaintiff required them to value their security, which they did at 500*l.* They were,

therefore, struck out of the schedule of creditors. The property realised more than 500*l.* This was a summons to determine whether they were entitled to more than 500*l.* out of the proceeds of the security.

Glasse, Q.C., and *Dundas Gardiner* for the plaintiffs.

W. W. Karslake, Q.C., and *Kingdom* for the creditors.

FRY. J. held that the creditors were not limited to the 500*l.*

Chancery Division. FRY, J. March 15. } BOYD *v.* ALLEN.

Jurisdiction—Partition—Power of Sale.

This was a partition action by the beneficial owner of four-fifteenths of certain real estate.

The defendant objected to the jurisdiction, on the ground that the trustees had a power of sale.

Glasse, Q.C., and *E. S. Ford* for the plaintiff.

Everitt, Q.C., and *W. W. Cooper* for the defendant.

FRY, J., overruled the objection.

Chancery Division. FRY, J. March 15. } SWIFT *v.* PANNELL.

Bills of Sale Act, 1878, *s.* 20—*Bills of Sale Act*, 1882, *ss.* 3, 15.

This was a motion by the holder of an absolute bill of sale to determine whether the property subject to the bill of sale was in the order and disposition of the grantor, who had been adjudicated bankrupt.

Warrington for the motion.

Cozens-Hardy, Q.C., and *Terrell*, for the trustee in bankruptcy, *contrà*.

FRY, J., held that section 3 of the Act of 1882 limited the repeal by subsection 15 of section 20 of the Act of 1878 to bills of sale given for security; and, therefore, the property was not in the order and disposition of the bankrupt at the time of his bankruptcy.

Chancery Division. FRY, J. March 15. } *In re* THE SOUTH-EASTERN RAILWAY COMPANY. *Ex parte* SOMERVILLE.

Lands Clauses Consolidation Act, 1845, *s.* 83—*Costs—Taxation.*

This was a motion by a solicitor to discharge an order for taxation of his bill of costs which had been obtained under section 83 of the Lands Clauses Consolidation Act, 1845, on the ground that the bill had been paid.

Simmonds for the motion.

C. T. Mitchell for the company.

FRY, J., held that the section does not apply to costs which have been paid; and discharged the order.

Chancery Division. KAY, J. March 12. } STANNARD *v.* BURT.

Will—Construction—Gift of Personalty by way of Substitution to a Class 'or their Heirs'—'Surviving.'

A testator, after bequeathing a life interest affecting the whole of his residuary personal estate, and directing a sale on the death of the tenant for life, bequeathed certain legacies, and directed that whatever remained in the hands of his executors should be divided 'in the manner following, and giving two-thirds to the surviving sisters or sister of my wife or their heirs,' and one-third to certain other persons.

Graham Hastings, Q.C., and *Terrell* for the plaintiff.

Coltman, Procter, and *Wurzburgh* for other parties.

KAY, J., followed *Neilson* v. *Monro*, 27 *Weekly Reporter*, 936, in which case Fry, J., held that the decision in *Smith* v. *Butcher*, 48 Law J. Rep. Chanc. 136, did not apply to a case where the gift to heirs was substitutionary, and held that the word 'heirs' meant next-of-kin, according to the Statute of Distributions. He also held that the word 'surviving' meant surviving at the death of the testator.

Chancery Division. KAY, J. March 7, 12, 17. } HAWES *v.* DRAEGER.

Illegitimacy—Presumption of Legitimacy—Child of married Woman born in Lifetime of her Husband—Evidence sufficient to rebut Presumption.

A testator bequeathed 4,000*l.* stock in trust for his daughter Caroline D. for life; and, after her death, for her children. Caroline D. married G., a man of dissipated habits, and had by him two children, one of whom died in infancy. In 1831 or 1832 G. was in difficulties, a distress was put into his house, he and his wife and family were turned into the streets, and he deserted them. G. died in August, 1837, and was buried near Regent's Park. After the desertion, Caroline D. went to live with H., a man in a respectable position of life, living at Brompton, and, while living with him there as his wife, had five children, of whom the eldest, Maria H., appeared to have been born in 1834. These five children all bore the name of H., which name alone appeared in the parish register, and on a certain family tombstone, and the uniform reputation in the family was that they were the children of H. Maria H. claimed to share in the 4,000*l.* stock as being the legitimate child of Caroline G., by her husband G. There was no evidence that G. ever had any communication with his wife subsequently to the desertion, but there was some evidence that he professed to marry another woman.

Fischer, Q.C., and *C. T. Mitchell*, for Maria H., relied on *Regina* v. *The Inhabitants of Mansfield*, 1 Q.B. Rep. 444.

Graham Hastings, Q.C., and *E. Ford* and *Everitt, Q.C.*, and *Eyre* appeared for the other parties.

KAY, J., held that, under all the circumstances of the case, and especially having regard to the position in life of the parties, the reputation which had always existed in the family, and the fact that Maria and all the children afterwards born were called by the name of H., there was evidence sufficient to rebut the legal presumption that Maria H. was legitimate.

Queen's Bench Division. March 10. } SIMMONS *v.* BERRY.

Practice — Affidavit — Defective 'Jurat' — Omission of Month.

This was an interpleader issue, tried before STEPHEN, J., in which a rule had been obtained calling upon the plaintiff to show cause why the verdict should not be set aside upon the ground that the affidavit of the registration of a bill of sale was defective.

H. Kisch showed cause: The deficiency relied on is the omission of the month from the *jurat* of the affidavit,

which alleges the affidavit to have been sworn 'this 25th of , 1882.' But that omission is immaterial; and directly the copy of the bill of sale, which is attached to the affidavit, and the body of the affidavit itself are looked to, it is apparent that the affidavit was sworn in the month of May.

S. Peile, in support of the rule: Perjury could not be assigned upon this affidavit. The date when the affidavit as to the due execution of the bill of sale is sworn is most material. He relied upon *The Duke of Brunswick* v. *Slowman*, 8 C. B. 617.

The COURT (LOPES, J., and MATHEW, J.) held that the affidavit was sufficient.

Rule discharged, with costs.

Queen's Bench Division. March 12. } THE AMESBURY UNION *v.* THE WILTS JUSTICES.

Highways—Highway and Locomotives Act, 1878 (41 & 42 *Vict. c.* 77), *s.* 13—*Contribution by County for main Roads—'Maintenance'—Removal of Snow.*

Special case stated by consent for the purpose of determining whether the defendants, as the county authority of Wilts, were liable to repay to the plaintiffs, as the highway authority of Amesbury, half the expense of removing snow, necessarily incurred to render main roads fit for traffic, as 'an expense incurred in the maintenance of such roads' under section 13 of the Highway and Locomotives Act, 1878.

Charles, Q.C. (*G. A. R. Fitzgerald* with him), for the plaintiffs.

The Solicitor-General (*Sir F. Herschell*) (*Ravenhill* with him) for the defendants.

The COURT (CAVE, J., and DAY, J.) gave judgment for the plaintiffs; holding that the necessary removal of snow was a 'repair' of the road within the principle of *Regina* v. *Greenhow*, 45 Law J. Rep. M.C. 141.

Judgment for the plaintiffs.

Queen's Bench Division. March 13. } THE FORE STREET WAREHOUSE COMPANY (LIM.) *v.* DURRANT & Co.

Practice—Action—Writ of Summons—Business carried on by Lunatic in the Name of a Firm—Mode of Service of Writ—Rules of Supreme Court, Order IX., Rules 5, 6, and 6a.

This was an application by way of appeal from an order of HAWKINS, J., made at chambers, refusing to set aside a judgment obtained under the following circumstances:—

It appeared that Madame Durrant carried on business, solely on her own account, under the name of 'Durrant & Co.' In November, 1882, Madame Durrant was admitted an inmate of a private lunatic asylum, as a person of unsound mind. On December 29 the plaintiffs issued a writ against 'Durrant & Co.,' for the price of certain goods sold and delivered, and this writ was, on December 30, served on a clerk in charge of the defendant's warehouse. A letter was, on December 29, written to inform the plaintiffs of the fact that Madame Durrant was in an asylum; but they alleged that the writ had been actually served before the letter in question reached their hands. No appearance being entered, judgment was on January 8, 1883, signed; and it was this judgment which it was now sought to set aside, on the ground of irregularity in the service of the writ.

By the Rules of the Supreme Court, Order IX., Rule 5, service of a writ in the case of a person of unsound mind, who is a defendant to an action, may be made on the person with whom the person of unsound mind resides, or under whose care he or she is. By rule 6, where partners are sued in the name of their firm, the writ shall be served upon any one or more of the partners, or, at the principal place of business, upon any person having at the time of service the management there. By rule 6*a* the same mode of service is prescribed in the case of 'one person carrying on business in the name of a firm apparently consisting of more than one person.'

E. G. Man for the appellant (the defendant): The whole question here depends upon whether the service of the writ of summons was regular or not. It is contended that the proper mode of service is that prescribed by Order IX., Rule 5, and that rule 6*a* has no application to a case like this, where the defendant is a lunatic.

Vaughan Williams, for the respondent, contended that the fact that Madame Durrant was a lunatic did not oust the application of Order IX., Rules 6, 6*a*.

The COURT (GROVE, J., and LOPES, J.) set aside the judgment; holding that the service of the writ should have been upon the manager of the asylum; and that the procedure prescribed in Order IX., Rule 6*a*, had no application to a case like the present.

Quære: Whether, if the defendant, though a lunatic, had had other partners who were not lunatics, proper service of a writ of summons might not have been effected under Order IX., Rules 6, 6*a*.

Appeal allowed.

Queen's Bench Division. March 16. } REGINA *v.* THE GLOUCESTER UNION.

Poor Law—Settlement—Separation of Husband and Wife—Lunatic Wife—Special Case.

In July, 1881, Margaret Billington was residing with her husband, James Billington, in his house at Myerscough, in the Garstang poor law union. The legal settlement of James Billington and his wife was in the Preston poor law union. In July, 1881, Margaret Billington became lunatic, and was removed to the Garstang workhouse. In August, 1881, an order of justices was made for her removal to the Preston workhouse. The husband consented to this order being made, and she herself was incapable of giving consent. The Court of quarter sessions, on appeal, quashed the order of removal; but stated a case for the opinion of this Court.

Addison, Q.C., for the Preston union, cited cases to show that it is against the policy of the law to take the wife from the place where her husband is residing.

A. Charles, Q.C. (with him *J. F. Leese*), distinguished the cases, on the ground that, the pauper being a lunatic, she must necessarily be separated from her husband; and further contended that, with the consent of the husband and wife, the wife might be removed to the place of her husband's settlement; and that here the husband had consented, and the wife was found to be unable to consent.

The COURT (POLLOCK, B., and NORTH, J.) reversed the order of quarter sessions, and restored the original order of removal, but without costs.

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HOUSE OF LORDS.

House of Lords. Dec. 5, 6, 1882. March 19, 1883. } WAKE AND ANOTHER *v.* HALL AND OTHERS.

Mines—'High Peak' Mining Customs—Right of Miner to remove Buildings erected by him on Surface.

This was an appeal from a judgment of the Court of Appeal, reported 50 Law J. Rep. Q.B. 545.

The respondent and his predecessors, owners of mines under certain land in the High Peak, in the exercise of customary rights, erected on the surface, which belonged to the appellants, buildings containing machinery for working the mines. They ceased working in 1872, but claimed the right to remove the buildings.

The appellants sought to restrain their doing so, relying on the rule *Quicquid plantatur solo, solo cedit.*

LORD COLERIDGE, L.C.J., who tried the case without a jury, gave judgment in favour of the appellants; but it was reversed by the Court of Appeal.

Mellor, Q.C., and *Gould* for the appellants.

Davey, Q.C., and *E. Moon* (*W. Graham* with them) for the respondents.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, LORD BRAMWELL, and LORD FITZGERALD) affirmed the judgment of the Court of Appeal, with costs.

House of Lords. Feb. 26, 27. March 1, 2, 19. } LYELL *v.* KENNEDY.

Practice—Interrogatories—Action of Ejectment.

This was an appeal from a decision of the Court of Appeal, reported 51 Law J. Rep. Chanc. 409, which affirmed one of BACON, V.C.

The question was whether a plaintiff in an action of ejectment is entitled to administer interrogatories to the defendant.

The Court of Appeal held that he was not.

M'Clymont for the appellant.

Horton Smith and *Leigh Clare* for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD WATSON, LORD BRAMWELL, and LORD FITZGERALD) held that there had never been any distinction between an action of ejectment and any other action in respect of the right to discovery, and declared that the respondent ought to answer the interrogatories administered. The respondent was ordered to pay the costs of this application in all Courts, whatever the result of the action.

COURT OF APPEAL.

Court of Appeal. BRETT, L.J. COTTON, L.J. BOWEN, L.J. March 15. } MARTIN *v.* THE ASSESSMENT COMMITTEE OF THE WEST DERBY UNION.

Poor-rate—Rateability of House occupied by Superintendent of Police—House Quarter of a Mile distant from Police Station.

Appeal from the Queen's Bench Division upon a case stated under 12 & 13 Vict. c. 45, s. 11.

The appellant, who was superintendent of police for the West Derby division, resided in a house which was hired by the chief constable for that purpose, under the authority of the trustees in petty sessions. The house was distant a quarter of a mile from the police station,

and was liable to be used for such purposes connected with the police force as the chief constable might direct. The appellant occasionally did police business in the house, but no room was specially set apart for any purpose other than for the use of the appellant and his family. It was necessary that the appellant should reside within a convenient distance from the police station for the due performance of his duties; he was also compelled to reside in the house, and could be removed therefrom at any time.

The Queen's Bench Division (FIELD, J., and CAVE, J.) held, on the authority of *Gambier* v. *The Overseers of Lydford*, 23 Law J. Rep. M.C. 69, that the appellant was liable to be rated in respect of his occupation of the house and premises.

Gorst, Q.C., and *Hulton* for the appellant.

Webster, Q.C., and *Bigham*, for the respondents, were not heard.

Their LORDSHIPS dismissed the appeal; holding that the house was not Crown property, and that the mere fact that it was occupied by a Crown servant, who had the exclusive use of it, did not bring it within the established exemptions from rateability.

Court of Appeal.
JESSEL, M.R.
COTTON, L.J.
LINDLEY, L.J.
March 15.

Ex parte WILLEY. *In re* WRIGHT.

Bankruptcy—Composition—Examination of Creditor—Bankruptcy Act, 1869, *ss.* 96, 125, 126—*Bankruptcy Rules*, 1870, *Rules* 166, 171.

This was an appeal from a decision of BACON, C.J.

The debtors presented a liquidation petition in the Bradford County Court. At the first meeting resolutions were passed accepting a composition of 6*d.* in the pound, payable by instalments. These resolutions were afterwards confirmed and registered. Willey, a creditor, tendered a proof for 3,412*l.*, as the holder of two bills of exchange. The debtors applied to the registrar for a summons, under section 96, to examine him. Willey refused to be sworn before the registrar, on the ground that the Court had no jurisdiction to examine him. The registrar referred the question to the judge of the County Court, who committed the creditor for contempt. Willey appealed to the Chief Judge; and he—being of opinion that section 96 of the Bankruptcy Act, 1869, applied to composition resolutions as much as to proceedings in bankruptcy, so as to enable a compounding debtor to bring before the Court for examination a person alleging himself to be a creditor who had tendered a proof under the proceedings—affirmed the decision of the County Court, but stayed execution pending an appeal.

Willey now appealed.

Cooper Willis, Q.C., and *West* for the appellant.

Winslow, Q.C., and *Finlay Knight* for the debtors.

Their LORDSHIPS said that the object of section 96 was not testimony, but discovery. The power given by the section existed only in bankruptcy and liquidation, and ought to be very carefully exercised. Section 125 expressly extended the previous provisions of the Act to liquidation by arrangement; but in section 126, which dealt with composition, there was no such extension. This was a plain declaration that the provisions were not to be extended to composition. The appeal must accordingly be allowed, and the order for committal discharged, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
March 21, 22.

THOMAS *v.* WILLIAMS.

Tenant for Life—Power of Sale—Appointment of new Trustee—Pending Action—Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *ss.* 3, 53.

This was an action, by the remaindermen under a will, to restrain the tenant for life and the surviving trustee from selling an estate of about 630 acres in the county of Glamorgan, and for the appointment of a new trustee. The testator appointed two trustees, of whom one was dead, and empowered the trustees, or the survivor of them, to sell at the request, and by the direction, of the person entitled to the actual freehold, with the usual provisions for reinvestment in land, and gave a power of appointing new trustees to the same person. Pending the action, the Settled Land Act, 1882, came into operation; and a few days before the trial of the action the tenant for life appointed a new trustee, without referring the appointment to the Court. It was proposed to invest the proceeds of sale in Consols. The plaintiffs adduced evidence to show that the estate would sell to better advantage in some years' time, owing to the fact that a railway was in contemplation which would pass through the estate, and to the existence of valuable minerals, which would probably be developed in a few years' time. The tenant for life admitted in his evidence that he 'would not have sold the estate if he had been absolute owner, but it was a different thing being tenant for life.' The plaintiffs contended that a sale under the power in the will ought to be restrained, as it was not made for the purpose of reinvestment in land; and that the power given by section 3 of the Settled Land Act was limited by section 53, which provides that the tenant for life is to act as a trustee in the interests of all parties.

Hemming, Q.C., and *Christopher James* for the plaintiffs.

Marten, Q.C., and *Mulligan* for the tenant for life.

Carew for the trustees.

BACON, V.C., held (1) that the tenant for life was entitled to exercise his discretion in selling at the present time, as well under the will as under the Settled Land Act; and (2) that the new trustee was properly appointed, notwithstanding the pending action; and dismissed the action, with costs.

Chancery Division.
FRY, J.
March 15.

HUTTON *v.* THE WEST CORK RAILWAY COMPANY.

Statute—Construction—'Revenue Charges'—Directors' Remuneration—Companies Clauses Consolidation Act, 1845, *s.* 91.

This was a motion to restrain the application of money voted at a meeting of the West Cork Railway Company, in payment of directors' salaries out of the proceeds of the sale of the company's undertaking. In 1879 an Act was passed to enable the Cork and Bandon Railway Company to take over, by purchase, the

undertaking of this and other companies. That Act provided for the ascertainment of the purchase-money by arbitration, and the application of such purchase-money—first, in paying costs incident to the passing of the Act and carrying out the sale; secondly, in paying revenue charges; and, thirdly, in distributing the balance among the respective classes of debenture stock holders, preference and ordinary shareholders, in proportions to be determined by arbitration. The Act provided for the dissolution of the company on the completion of the transfer, except for the purpose of winding-up and applying the purchase-money. The arbitrator appointed had fixed the price, which had been paid, and the undertaking transferred. He had also fixed the proportions in which the ultimate balance was to be distributed among the parties interested. A meeting of the company had been held, at which it was resolved to set apart 4,000*l.* for revenue expenses and charges and to distribute the balance. The company voted to the directors as remuneration the balance of the 4,000*l.*, after satisfying other revenue charges. The directors had received nothing for twenty years. Two questions were raised—(1) whether such directors' salaries were revenue charges which could be paid out of the purchase-money; (2) whether the vote had been taken with necessary regularity, inasmuch as the notice of the meeting did not state that the salaries would be voted.

Cookson, Q.C., and *Seward Brice* for the motion.

Cozens-Hardy, Q.C., and *Beale, contrà.*

FRY, J., held that the company had power to vote the directors' salaries as revenue charges, which charges were not confined to those for one year only; that remuneration could be voted to directors in exercise of the powers of the general body under section 91 of the Companies Clauses Act, but that proper notice had not been given. He therefore granted the injunction till a fresh meeting was held upon proper notice; but he did so without costs.

Chancery Division. KAY, J. Feb. 27. March 7. } THRING *v.* SALTER.

Will—Construction—Vesting—Gift over.

By the will of James Blunt, dated in 1831, real estate was limited to trustees in fee upon trust for his son Edward for life, and, after his decease, upon trust for all and every the sons and daughters of the said Edward, equally to be divided between or amongst them, if more than one, share and share alike as tenants in common, on their respectively attaining the age of twenty-one years; and, in default of such issue of his said son Edward attaining such age of twenty-one years, then in trust for his son Walter, his heirs and assigns for ever, and to be thereupon conveyed to him and them accordingly. Edward Blunt survived the testator and died in 1880, having had six children, of whom two died in his lifetime infants, leaving their father their heir-at-law; the other four attained twenty-one.

This was a special case, raising the question whether the shares of the two infants were vested, or had been divested in consequence of the gift over not having taken effect.

Rigby, Q.C., and *Marcy*, for the plaintiffs, the devisees in trust under the will of E. Blunt, contended that the shares of the two infants were vested, and had not been divested, as the gift over had not taken effect.

W. Pearson, Q.C., and *J. J. H. Humphreys*, for the defendants, *contrà.*

Marcy in reply.

March 7.—KAY, J., held that the words 'on their respectively attaining the age of twenty-one' not being immediately connected with the words of gift, but with the direction to divide, the interests of the children were therefore vested, subject to be divested only in the event of all the children dying under twenty-one.

Chancery Division. KAY, J. March 10. } *In re* COPPIN'S ESTATE.

Will—Forfeiture on Bankruptcy, &c.—Gift over in case Legatee should 'be' Bankrupt or 'make' Assignment for Creditors.

A testatrix bequeathed her residuary estate to her executors upon trust to divide the same into equal parts, and bequeathed one moiety to her son W.; 'but in case he should be bankrupt or insolvent, or make any assignment for his creditors,' then over. At the time of the death of the testatrix, W. had not become bankrupt or insolvent, or made any assignment for the benefit of his creditors; and the question was whether he was indefeasibly entitled to his moiety, or whether the gift over would take effect in the event of his becoming bankrupt, &c., at any future time.

Haughton and *Edwin Ward* appeared for the several parties.

KAY, J., held that the gift over was confined to bankruptcy, &c., before the period of division, *i.e.* the death of the testatrix; and that W. was, therefore, indefeasibly entitled. The word of futurity 'make' was explainable by referring it to the period between the dates of the will and of the death of the testatrix.

Chancery Division. CHITTY, J. March 19. } EARL CAWDOR *v.* LLANELLY LOCAL BOARD OF HEALTH.

'Ex parte' Application—Witness—'Evidence de bene esse—Special Examiner.

H. Terrell moved *ex parte* for liberty to examine a witness, aged ninety-three, residing in Wales, and unable, from infirmity, to leave his home *de bene esse*, and also that J. B. S. should be appointed special examiner to take such evidence.

Order granted.

Chancery Division. PEARSON, J. March 17. } HORSFALL *v.* THE HALIFAX BANKING COMPANY.

Equitable Mortgage—Shares in Bank—Fraud of Mortgagor—Lien.

This was an action by the executors of the late George Horsfall, claiming a declaration that thirty 20*l.* shares in the bank were subject to an equitable mortgage created by the deposit of the share certificate, to secure the sum of 1,000*l.*, and interest.

In November, 1878, Horsfall lent Joseph Bentley 1,000*l.* upon the security of the deposit of a certificate of shares in the defendants' bank. Horsfall gave no notice of the deposit to the bank, and made no inquiry whether they had any claim against Bentley until March 17, 1880. On that day he was informed by the bank

manager that the bank had no claim on the shares. On the same day Bentley was adjudicated a bankrupt. It appeared that, in the year 1878, Bentley was a customer of the bank, and was also secretary of a local club having an account with the bank; that, in January, 1878, Bentley fraudulently altered a cheque, drawn by himself as secretary of the club, for 600*l.*, payable to 'Stoney or order,' by striking out the word 'order,' adding the word 'bearer,' and then taking the cheque to the bank, and inducing the bank manager to place the 600*l.* to the credit of his own account.

In May, 1880, the bank got notice of the fraud of Bentley, and found that they were responsible to the club for the 600*l.*, as they had paid it on an irregular cheque. In August, 1880, the bank settled with the club; and in October, 1880, they gave notice to the plaintiffs that they claimed a lien for the 600*l.* on the shares standing in the name of Bentley.

Higgins, Q.C., and *Eyre* for the plaintiffs.

Barber, Q.C., and *Bunting* for the defendants.

PEARSON, J., said that the bank, on discovering the fraud committed by Bentley, had a perfect right to charge the 600*l.* against Bentley, and to say that there was that sum due to them from him. The share certificate, deposited with Horsfall in November, 1878, gave him clear notice that the holder of the shares was subject to all the rules and regulations of the deed of settlement; and that deed contained the usual clause giving the bank a lien on the shares for whatever might be due to them from Bentley. His lordship could not see that Horsfall had sustained any injury from the statement made by the bank manager on March 17, 1880. That statement, certainly, did not induce him not to sell the shares. The case of the plaintiffs failed, and their claim must be dismissed.

Queen's Bench Division. March 5, 6, 19. BARTON & Co. *v.* ENGLISH & Co.

Ship and Shipping—Charter-party—Carriage of Deck Cargo 'at Merchant's Risk'—Loss by Jettison—General average Contribution.

This was an action brought by the charterers against the owners of a vessel; and the question raised was whether, in cases where deck loads are carried under charter-parties or bills of lading providing that such deck loads shall be carried 'at merchant's risk,' an owner of such deck loads has any claim to have losses by jettison of such deck loads made good by general average contribution. The vessel in question had been chartered to load a timber cargo at Finnklippan, in Sweden, and proceed therewith to London, it being a term of the charter-party that the vessel 'should be provided with a deck load if required, at full freight, but at merchant's risk.' A quantity of timber was loaded on the deck of the ship, which stranded on the voyage, and a part of such deck load was necessarily jettisoned and lost in order to save the ship and the rest of the cargo. It was proved that there was a custom for ships carrying timber cargoes from Finnklippan to English ports to carry a deck cargo of timber upon such voyages, and the plaintiffs sought under the above circumstances to secure from the defendants a general average contribution. The defendants on the other hand contended that no general average contribution was payable by them in respect of the jettison of the deck load.

Cohen, Q.C., and *Barnes* for the plaintiffs.

Myburgh, Q.C., for the defendants.

Cur. adv. vult.

The COURT (CAVE, J., and DAY, J.), on March 19, gave judgment for the defendants; holding that the words 'at merchant's risk' excluded any claim on the part of the plaintiffs to have a loss by jettison of a portion of a deck load made good by general average contribution.

Judgment for the defendants.

Queen's Bench Division. March 9, 20. MITCHELL *v.* THE DARLEY MAIN COLLIERY COMPANY.

Practice—Costs, Appeal as to—Terms of granting Order for Inspection of Mines—Jurisdiction to order Payment of Costs to be incurred in future Inspection—Costs incident to Proceedings in the High Court—Order LII., Rule 3—Order LV., Rule 1—Judicature Act, 1873, *s.* 49.

This was an appeal from the order of HAWKINS, J., at chambers, who, upon application made by the plaintiff for an order to inspect the defendants' mines and workings, granted the application, on the terms of the applicant paying the costs of the inspection.

Bigham, for the plaintiff, appealed against the imposition of such terms.

Archibald, for the defendants, took the objection that it was an appeal as to costs only, which would not lie by virtue of the Judicature Act, 1873, s. 49.

Cur. adv. vult.

March 20.—The COURT (CAVE, J., and DAY, J.) decided that these were costs 'incident to proceedings in the High Court.' They were, therefore, by Order LV., Rule 1, in the discretion of the judge at chambers; and, consequently, his order with respect to them was not subject to any appeal.

Appeal dismissed.

Queen's Bench Division. March 20. DOUGHTY *v.* FIRBANK.

Employers' Liability Act, 1881, *s.* 1, *subs.* 5—*'Trains upon a Railway'—Meaning of 'Railway.'*

This was an action brought under the provisions of the Employers' Liability Act for personal injury caused to a workman by reason of the negligence of a person in the service of the employer, who, it was alleged, had the charge of 'a train upon the railway' within the meaning of 43 & 44 Vict. c. 92, s. 1, subs. 5.

The accident occurred on a temporary tramway laid for the passage of engines and trucks used in the construction of a line for the South-Eastern Railway. The County Court judge gave judgment for the plaintiff.

Douglas Kingford now moved for a rule, by way of appeal, to set aside the judgment on the ground that the term 'railway' meant some railway opened under the provisions of an Act of Parliament, as distinguished from a mere temporary tramway.

The COURT (POLLOCK, B., HUDDLESTON, B., and NORTH, J.) refused the rule on the ground that the term 'railway' was held, in section 1, subsection 5, in a popular sense, and was intended to include the way in question.

Rule refused.

ERRATUM.—In the name of the last case in last week's Notes of Cases (p. 40), for *Regina* v. *The Gloucester Union* read *Garstang Union*.

Table of Cases.

HOUSE OF LORDS.

House of Lords. March 5, 6. April 9. } Bradlaugh *v.* Clarke.

Penalty—Common Informer—Right to sue—Parliamentary Oaths Act, 1866 (29 & 30 *Vict. c.* 19), *s.* 5.

This was an appeal from the judgment of the Court of Appeal, which affirmed one of the Queen's Bench Division. See the case reported on the demurrer, 50 Law J. Rep. Q.B. 678; 51 Law J. Rep. Q.B. 1.

The action was brought by the respondent, a common informer, to recover penalties under the Parliamentary Oaths Act, 1866. Judgment, after trial, was given in his favour in the Courts below.

The only point argued on the present appeal was whether the penalty could be recovered by a common informer, or only by the Attorney-General on behalf of the Queen.

The appellant, in person, argued in support of the appeal.

Sir H. Giffard and *Kydd* for the respondent.

Cur. adv. vult.

Their Lordships (the Earl of Selborne, L.C., Lord Watson, and Lord Fitzgerald; *dissentiente* Lord Blackburn) reversed the judgment of the Court below, with costs.

COURT OF APPEAL.

Court of Appeal. Baggallay, L.J. Cotton, L.J. April 3. } *In re* The Photographic Artists Co-operative Supply Association (Limited).

Company—Winding-up Order—Appeal—Security for Costs.

On February 15 last the above-named company was ordered to be wound up by Chitty, J., on the ground that it was unable to pay its debts.

The company appealed against the order.

The respondent to the appeal now applied that the company might be ordered to give security for the costs of the appeal.

Davey, Q.C., Romer, Q.C., and *Boome*, for the motion, relied on the *dictum* of James, L.J., in *Re The Diamond Fuel Company*, 49 Law J. Rep. Chanc. 301; L. R. 13 Chanc. Div. 400.

Ince, Q.C., and *Bramwell Davis*, for the company, *contrà*, contended that there was no necessity for directing security to be given. If the appeal failed the respondents would, according to the usual practice, be paid their costs out of the assets of the company.

Their LORDSHIPS held that, as a general rule, where a company, which is ordered to be wound up on the ground that it is unable to pay its debts, appeals against the winding-up order, security for the costs of the appeal ought to be required of it; and, accordingly, directed 25*l.* to be paid into Court.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
BOWEN, L.J.
March 13.
April 5.

PRYOR *v.* THE CITY OFFICES COMPANY.

Practice—Procedure in Mayor's Court—Application of Rules of Supreme Court to—Judicature Act, 1873 (36 & 37 *Vict. c.* 66), *s.* 89—*Rules of Court, Order XL., Rule* 10.

Appeal of the defendants from an order of the judge of the Mayor's Court giving judgment for the plaintiff.

Action in the Mayor's Court.

The case of the plaintiff being concluded, the counsel for the defendants opened the case for the defendants; whereupon the counsel for the plaintiff submitted that, even assuming the case, as opened, to be proved, yet it afforded no answer to the plaintiff's claim. No evidence was given on behalf of the defendants; but the recorder asked the jury what their opinion was, and the jury gave a verdict for the defendants.

The plaintiff then moved for a new trial; and the recorder, being of opinion that he had 'all the materials necessary for finally determining the questions in dispute,' gave judgment for the plaintiff under Order XL., Rule 10, of the Rules of the Supreme Court.

The defendants appealed on the ground that the Rules of the Supreme Court do not apply to proceedings in the Mayor's Court.

Masterman for the appellants.

Dodd for the plaintiff.

Their LORDSHIPS allowed the appeal, and remitted the case to the Mayor's Court for a new trial; holding that the Rules of the Supreme Court do not apply to proceedings in the Mayor's Court; and that, as no rules containing similar provisions had been made for the Mayor's Court, the judges of that Court did not possess the power given by Order XL., Rule 10, to the judges of the Supreme Court.

Court of Appeal.
BRETT, M.R.
BOWEN, L.J.
April 4, 7.

M'GOWAN AND ANOTHER *v.* MIDDLETON.

Practice—Claim and Counter-claim—Discontinuance by Plaintiff—Effect on Counter-claim—Judicature Act, 1873 (35 & 36 *Vict. c.* 66), *s.* 24, *subs.* 3, 7—*Rules of Court, Order XIX., Rule* 3; *Order XXII., Rule* 10; *Order XXIII.*

Appeal from the refusal of the Queen's Bench Division to order judgment to be signed for the defendant on his counter-claim.

In answer to an action brought by the plaintiffs, the defendant delivered a defence and a counter-claim which exceeded in amount the sum claimed by the plaintiffs. The plaintiffs then discontinued their action, and did not deliver any reply to the counter-claim. The defendant then applied for judgment for default of pleading. The Divisional Court considered that the case was governed by *Vavasseur* v. *Krupp*, L.R. 15 Chanc. Div. 474, and refused the application.

The defendant appealed.

Ambrose, Q.C., and *Henry* for the appellant.

Crampton, Q.C., and *Reed* for the plaintiffs.

Their LORDSHIPS allowed the appeal; holding that the discontinuance of the action by the plaintiffs did not put an end to the counter-claim of the defendant, and that *Vavasseur* v. *Krupp* could not be supported.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
April 9.

CAPELL *v.* THE GREAT WESTERN RAILWAY COMPANY.

Lands Clauses Act, 1845 (8 *Vict. c.* 18), *s.* 34—*Lands compulsorily taken—Arbitration as to Price—Costs of Arbitration—Payment when due.*

Appeal from the judgment of LOPES, J., on further consideration. The case is reported 51 Law J. Rep. Q.B. 601.

The question raised by the appeal was whether, where the amount of compensation payable to the owner of land taken under the compulsory powers of the Lands Clauses Acts is settled by arbitration, and the costs of the arbitration are awarded to the owner, he is entitled to be paid such costs before the conveyance of the land has been executed by him.

Lopes, J., gave judgment for the owner.

The railway company appealed.

R. S. Wright for the appellants.

Charles, Q.C., and *Bucknill*, for the plaintiff, were not called on.

Their LORDSHIPS dismissed the appeal; holding that

such costs become payable within a reasonable time after the award, and that the execution of the conveyance is not a condition precedent to the recovery of such costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
March 20.
} NORRIS *v.* ORMOND.

Practice—'Ex parte' Injunction to restrain Interference with Ward of Court—Until further Order.

Theodore Ribton moved *ex parte* on the last motion day in Hilary sittings for an injunction extending over the first motion day in the Easter sittings, to restrain a marriage with a ward of Court, and to restrain a person from communication with the ward. He stated that the guardian would serve notice of motion to continue the injunction.

BACON, V.C., said that in motions of this nature the injunction would be granted generally until further order; and granted the injunction in these terms.

Chancery Division.
BACON, V.C.
April 3.
} *Re* GOUGH.

Practice—Public Company—Purchase of Land—Payment out—Petition—Costs—Incumbrances—Lands Clauses Consolidation Act, 1845, *s.* 80.

In a petition for the sale and payment out of Court of a sum of stock representing money paid into Court by the Great Western Railway Company, under the Lands Clauses Act, which had been presented by the persons interested in the equity of redemption and the incumbrancers, the company was ordered, in the usual way, to pay the costs of all parties, pursuant to section 80 of the Act. The incumbrances had been created subsequently to the payment into Court; and the registrar, in giving out the minutes, had added, 'but such costs are not to include the costs of proving the incumbrances on the shares incumbered.'

MacSwinney, for the petitioners, now moved to vary the minutes by striking out these words; contending, on the authority of *Eden* v. *Thompson*, 2 H. & M. 6, and *Re Bareham*, L. R. 17 Chanc. Div. 329, that the incumbrances had been created in the ordinary course of dealing with the property, and that, therefore, the costs of proving them were properly payable by the company.

Hemming, Q.C., and *Watson*, for the company, *contrà*, relied on *Re Jones*, 18 W. R. 312.

MacSwinney replied.

BACON, V.C., held that the costs of incumbrancers, whose claims were subsequent to the payment into Court, were not payable by the company; and refused the motion, but made no order as to costs.

Chancery Division.
BACON, V.C.
April 3.
} KNOX *v.* WELLS.

Will—Annuity on Death of G., leaving E., his Wife, surviving—Divorce of E.—Gift to E. so long as she continues unmarried.

A testator, who died in 1853, directed his trustees to pay to his son G. and E., his wife, the annual sum of 150*l.* jointly; and declared that, on the death of his son G., 'leaving E., his wife, surviving him,' his trustees should pay 'to her, the said E., the annual sum of 50*l.* so long as she continues unmarried.' In 1863 G. obtained a divorce against E. In May, 1882, G. died. E. had not been remarried, and now claimed the 50*l.* annuity.

Horton Smith, Q.C., and *J. W. Clark* for E.

D. L. Alexander, contrà, submitted that 'so long as she continues unmarried' was equivalent to 'so long as she continues a widow;' and that, if so, the case was within *In re Boddington*, 52 Law J. Rep. Chanc. 239; L. R. 22 Chanc. Div. 595.

BACON, V.C., held that E. was entitled to the annuity so long as she remained unmarried.

Chancery Division.
BACON, V.C.
April 7.
} *Re* MARY HUDSON'S WILL TRUSTS.

Will—Executor—Residue—No Next-of-kin—Legacy to Executors for Care and Trouble.

A testatrix devised freeholds unto and to the use of H. and G., their heirs and assigns, upon trust, for sale, directing them to hold the proceeds upon the trusts thereinafter declared. She then bequeathed to H. and G., their executors, administrators, and assigns, her money, stocks, and securities, upon trust, for conversion and payment of her funeral and testamentary expenses and debts and certain charitable legacies, and upon further trust, out of the residue of such moneys and the proceeds of sale of her freeholds, to pay certain pecuniary legacies, including one of 2,000*l.* to H. and his wife; and the ultimate residue of her said real and personal estate she gave equally between H. and G., for their own use and benefit absolutely. She then appointed H. and G. executors and trustees of that her will.

The testatrix subsequently, by codicil, revoked the gift of the ultimate residue to H. and G., and, instead thereof, gave them each 500*l.* 'for his trouble in acting as an executor and trustee of her said will.'

H. and G., the executors, after paying all the debts and legacies, had in their hands 2,126*l.*, representing residue of moneys and proceeds of sale of stocks and securities, 304*l.* representing undisposed-of residue of proceeds of sale of real estate, and 95*l.* representing proceeds of sale of furniture and other household articles not included in, or disposed of by, the will or codicil.

The testatrix died without leaving any heir-at-law or

next-of-kin; and, these sums having been paid into Court under the Trustee Relief Act, the question was, whether the executors or the Crown were beneficially entitled to these sums.

Millar, Q.C., and *J. T. Humphry* for the executors.

Stirling for the Crown.

BACON, V.C., considered that the executors were not intended by the testatrix to have anything more than the 500*l.* legacies; and that the claim of the Crown must be allowed, except as to the 304*l.*, to which the right of the trustees was not seriously disputed.

Chancery Division. Fry, J. March 16, 17, 20. } *In re* GREAVES'S SETTLEMENT.

Will—Construction—Appointment.

Real estate was settled in manner that gave Jonathan Greaves a power of appointment over it after the life-interest of his wife. The property had been sold under a power of sale and reinvestment in land, and was, at the time of J. Greaves's will, represented by bank annuities standing in the name of the trustees of the settlement.

The will of Jonathan Greaves contained a bequest of all moneys he should die possessed of in the public funds, or in the care of Mr. Underhill, or elsewhere. Jonathan Greaves died in the lifetime of his wife. She was now dead, and the trustee of the settlement transferred the fund into Court. This was a petition by the son and heir of Jonathan Greaves, who was entitled, in default of appointment, for payment out to him.

Glasse, Q.C., and *Ingram* for the petition.

Cookson, Q.C., and *J. G. Wood* for the three children, who were entitled under the bequest.

FRY, J., held there had been no exercise of the power, and the heir was entitled.

Chancery Division. Fry, J. April 6. } *In re* BYRON'S CHARITY.

Settled Land Act, 1882, *s.* 32—*Settlement—Charity—Investment.*

This was a petition for the investment of money paid into Court under the Lands Clauses Consolidation Act, 1845, in railway debenture stock. The money in Court was the purchase-money for land vested in trustees for a charity, taken by a railway company for the purposes of their undertaking.

Smart, for the petition, submitted that the money was 'liable to be laid out in the purchase of land to be made subject to a settlement' within the meaning of section 32 of the Settled Land Act, 1882, and the proposed investment was therefore authorised.

Dunning for the railway company.

FRY, J., made the order asked.

Chancery Division. Fry, J. April 7. } *In re* GLOUE AND MILLER'S CONTRACT.

Vendor and Purchaser—Waiver.

This was a summons, by a purchaser of a dwelling house, to determine whether he was bound to complete. It appeared that the property was subject to certain restrictive covenants, of which no notice was taken in the contract. But the purchaser took possession; and, after he had notice of the restrictive covenants, made structural alterations.

Everitt, Q.C., and *Maidlow* for the purchaser.

Cozens-Hardy, Q.C., and *Methold*, for the vendor, were not called on.

FRY, J., held that, as the purchaser had acted with notice of a defect in the title, which it was not in the power of the vendor to remove, he must be taken to have waived the objection.

Chancery Division. Fry, J. April 9. } LADD *v.* PULESTON. PULESTON *v.* LADD.

Judicature Act, 1873, *s.* 34—*Account—Chancery Division.*

Messrs. Puleston & Co. brought an action in the common law division with a writ specially endorsed under Order VI., Rule 6. The defendant obtained leave to defend under Order XIV., Rule 1. Pleadings were put in, the defendant delivering a counter-claim as well as a statement of defence. He alleged that the plaintiffs, Messrs. Puleston & Co., were law agents, and there were complicated accounts between them, in the taxing of which there would be found a balance due to him; and, by this counter-claim, he asked for such accounts and an order for payment of the balance to him. He also commenced an action for an account in the Chancery Division.

This was a summons by Messrs. Puleston to stay the latter action.

Anderson for the summons.

Sturges for the plaintiff Ladd.

FRY, J., asked if both sides were willing that the common law action should be transferred to this Division, and the action of *Ladd* v. *Puleston* stayed, on terms that the costs should be dealt with on the trial of the other action.

Anderson, for Messrs. Puleston, declined to submit to such an arrangement.

FRY, J., said the best course to pursue would be that which he had suggested; but he had no jurisdiction to transfer the common law action to this Division without the consent of Messrs. Puleston. At the same time, the subject-matter of the action rendered it one that ought to be assigned to the Chancery Division; and he refused the summons, with costs.

Chancery Division. Kay, J. March 7. } *In re* Vyvyan. Whitfield *v.* Vyvyan.

Will—Codicil—Confirmation—Implied Revocation.

R. Vyvyan, by his will dated in 1815, devised his real estate to his brother William for life with remainder to his issue, with remainder upon trust for Sir R. Vyvyan and the successors to his baronetcy. In April, 1870, he made a codicil by which, after reciting the death of his brother William, leaving one daughter only, viz. Kate Vyvyan, he revoked the devise in favour of his brother and his issue, and devised all his real estate upon trust for Kate Vyvyan for life, with remainder to her issue, with remainders over in favour of Sir R. Vyvyan and his successors.

By a third codicil he revoked all the provisions of his will in favour of Kate Vyvyan, and confirmed all its other provisions; so that his will, save as to a legacy of 100*l.* a year to her by that codicil bequeathed, should be read as if she had died in his lifetime.

He then made another codicil to the same effect, except that he confirmed his will as if Kate had died without issue in his lifetime, save as to the bequest made to her by that codicil, by which he also gave her 100*l.* a year.

His sixth codicil was as follows: 'I declare this to be a codicil to my last will; and I hereby, in consequence of the death of Sir R. Vyvyan, substitute for him the present baronet, Sir V. D. Vyvyan, and his heirs male, to whom I make the same devise, and in all other respects I confirm my said will and former codicil.' Two questions arose—1. Whether the sixth codicil revived the will as it originally stood, and thus revoked all the other codicils except the first; and 2. Whether the provisions for Kate Vyvyan were cumulative.

Theobald, Hastings, Q.C., and *Method, Rigby, Q.C.*, and *Wolstenholme*, were for the various parties.

March 7.—Kay, J., referred to his decision in *Follett* v. *Pettman*, noted *ante*, p. 35, and answered the first question in the negative, he being by no means certain that the confirming clause in the sixth codicil was not an imperfect reference to all the preceding codicils. The second question he also answered in the negative.

Chancery Division. Kay, J. March 2, 10. } *In re* Bratt's Trusts.

Will—Construction—Gift, vested or contingent.

John Bratt, by his will, dated February 19, 1848, gave certain freehold and leasehold property to trustees, upon trust, for S. T., during her life, for the better maintaining herself, and the rearing and educating the children of her then present marriage—viz. Elizabeth, John, and Ann—but not among any future issue of the said S. T.; and, in case she should die before the youngest surviving child should attain twenty-one, then upon certain trusts until the youngest surviving child should attain that age; and, upon that event happening, then upon trust that the said trustees should sell the said property, and pay and divide the clear moneys to arise from such sale 'unto and among all and every the aforesaid child and children of the said S. T. as should then be living, and the issue (if any) of any child or children as should be then dead, such issue taking only the part or share of his, her, or their deceased parent or parents, at their respective ages of twenty-one years; and in case there should be only one of the aforesaid children of the said S. T. who should live to attain the age of twenty-one, then that the said trustees should pay such trust moneys unto such only child, his executors, or administrators.'

S. T. survived the testator and died in 1867. Of the three children, Elizabeth attained twenty-one, and died in 1858 unmarried. John also attained twenty-one, and died in 1866, having had two children—one of whom died, an infant, before her father; and the other, the petitioner, attained twenty-one. Ann, the youngest child of S. T., attained twenty-one in 1859, and was still living; so that the death of S. T. became the time of distribution.

The share of John having been paid into Court by the trustees of the will, the petitioner now asked to have the fund paid out to her; and the question was raised whether the representatives of the infant child of John were entitled to share.

J. Theodore Dodd for the petitioner.

C. L. Chubb for the respondents.

Kay, J., held that the words 'such issue taking only the part or share of his, her, or their deceased parent or parents' must be read as parenthetical; that the gift to the issue was, therefore, contingent upon their attaining twenty-one; and, consequently, that the petitioner, being the only child of John who attained twenty-one, was entitled to the whole of the fund, to the exclusion of the representatives of the other child of John who died an infant.

Chancery Division. Chitty, J. April 4. } *In re* Tootal's Trusts.

Domicile—Residence in China—Anglo-Chinese—Legacy Duty.

Notwithstanding the constitution of the Supreme Court of China and Japan, and the jurisdiction conferred on that Court over British subjects having a 'fixed place of residence' in China, a native of this country cannot acquire, by residence in China, a domicile analogous to that existing in India, and known as Anglo-Indian; and the estate of a British subject whose fixed place of residence is in China is therefore, on his death, not exempt from the operation of the Legacy Duty Acts.

Macnaghten, Q.C., and *Method, B. B. Rogers, Vaughan, Hawkins, Hood*, and *Bissill* for the parties.

Chancery Division.
CHITTY, J.
April 6.

ROSENBERG *v.* LINDO.

Practice—Infancy—Jurisdiction—Order against innocent Persons—'Subpœna.'

In the cognisance of cases affecting its wards, the Chancery Division has jurisdiction to summarily order the personal attendance before the Court of any person; and such jurisdiction is based, not on the law of contempt, but on the law which relates to the care of infants.

The practice of the Court is, in such cases, to proceed by order and not by *subpœna*.

Macnaghten, Q.C., and *Ingle Joyce*, and *Romer, Q.C.*, and *D. L. Alexander* for the parties.

Chancery Division.
PEARSON, J.
April 6.

THE SHEFFIELD WATERWORKS COMPANY *v.* BINGHAM.

Water Company—Supply of Water for Bath—Measurement of Water consumed—Consumer to provide and pay for Means of Measurement.

By the Acts of Parliament regulating the plaintiff company, the company was compellable to supply water to private dwelling houses within the district at certain rates, fixed according to the rental of the houses; and also (as was admitted, for the purposes of an action) to supply water for baths at a fixed rate per 1,000 gallons; and the company also undertook to supply water for baths, irrespective of quantity, for an annual payment of fixed amount. The defendant in the action required the company to supply him with water for a bath, and elected to pay for it according to the quantity consumed. He was willing to have the quantity of water used measured by an automatic self-registering meter, if the company were willing to supply the meter; but he refused to supply a meter at his own cost, or to hire one from the company, and proposed to ascertain the quantity of water used by placing a line round the bath, so that the bath, if filled up to that line, would contain thirty-two gallons, and then entering in a calendar the number of times during the year on which the bath was so used. The company contended that this method of measurement was imperfect; and claimed a declaration that, if they were compelled to supply water for the defendant's bath at all, it was only upon the terms of the defendant's supplying, at his own cost, an automatic self-registering meter, or hiring one from the company, and gave evidence to show that that was the only trustworthy method of measuring the quantity of water used. The substantial question thus came to be whether the company or the defendant was bound to pay for the meter.

Davey, Q.C., J. E. Barker, and *G. C. Price* for the company.

Cyril Dodd and *R. F. Norton* for the defendant.

PEARSON, J., said that the company provided the water by keeping its mains supplied at high pressure, and that the consumer who drew off the water from the mains into his bath was bound to measure the quantity of water taken by him, and keep a record of it, so as to be able to satisfy the company as to the quantity for which he had to pay. The Acts of Parliament, by giving power to the inspector to examine the meters used by consumers, and to require them to remedy defects, showed that it was contemplated by the Legislature that meters should be used, and should belong to the consumers. The mode of measurement adopted by the defendant was most unsatisfactory, and could not be accepted as sufficient; and the defendant must, at his own expense, measure the water consumed by him by an automatic self-registering meter, or by some other equally efficient instrument.

Queen's Bench Division.
March 3, 21.

JOHNSTON & Co. *v.* HOGG & Co.

Marine Insurance—Warranty against 'Seizure.'

Further consideration.

The plaintiffs, the owners of a vessel called the Cypriot, sued the defendants, underwriters at Lloyd's, on a policy of insurance effected on that vessel, alleging that she had been lost by perils insured against. The plaintiffs had on the policy warranted the vessel free from capture and seizure, and the consequences of any attempt thereat; and the defence was, that the loss was a loss by seizure within the meaning of that warranty. The vessel, on October 7, 1879, got ashore while going down the Brass river in Western Africa; the natives took forcible possession of her, drove away the master and crew, and plundered her; and, in consequence, she became a constructive total loss. The taking possession, according to the finding of the jury, was for the purpose of plundering the cargo, and not for the purpose of keeping the vessel.

Butt, Q.C., and *J. Fox* for the plaintiffs.

Gully, Q.C., and *J. G. Barnes* for the defendants.

CAVE, J. (on March 21), gave judgment in favour of the defendants; holding that the loss was a loss by 'seizure' within the meaning of the warranty, although the taking possession was not with the purpose of keeping the vessel.

Queen's Bench Division.
March 10, 21.

THE ATTORNEY-GENERAL *v.* DARDIER.

Legacy Duty—Valuation of Property not reduced into Money—36 Geo. III. c. 52, s. 22.

Information for legacy duty.

The defendant was residuary legatee of Harriet Bredel, who died in 1874. Part of the residuary estate consisted of certain pictures, furniture, and other personal chattels, which, in the residuary account delivered to the Inland Revenue Commissioners for assessment of legacy duty, were entered as property not converted into money, and were valued. Duty was accepted upon the basis of such valuation. The chattels in question were afterwards sold by the executor, in pursuance of an intention exist-

ing from the first, but not known to the Crown; and (although there had been no want of good faith towards the Crown) the proceeds greatly exceeded the valuation. The Crown claimed duty upon the excess.

The Attorney-General (*Sir H. James*) and *The Solicitor-General* (*Sir F. Herschell*) (*Vaughan Hawkins* with them) for the Crown.

Webster, Q.C., and *Lumley Smith, Q.C.* (*MacSwinney* with them) for the defendant.

Cur. adv. vult.

The COURT (POLLOCK, B., HUDDLESTON, B., and NORTH, J.) gave judgment (on March 31) in favour of the Crown; holding that 36 Geo. III. c. 52, s. 22, providing for the valuation of property 'which shall not be reduced into money,' did not apply where property was sold during the administration, though after account filed; and that the acceptance of the duty upon the basis of the valuation, in ignorance of the intention to sell, did not disentitle the Crown to duty upon the real value as shown by the sale.

Queen's Bench Division. Kay, J. March 10. April 5. } DORMONT *v.* THE FURNESS RAILWAY COMPANY.

Harbour Authority—Liability of—Removal of sunken Wreck—Wrecks Removal Act, 1877 (40 & 41 *Vict.* c. 16), *s.* 4—*Word 'may' whether permissive or obligatory.*

Case on further consideration from a trial at the assizes.

The defendants, as the harbour authority for the harbours of B. and P., under section 4 of the Wrecks Removal Act, 1877, took possession of a wrecked vessel sunk in the approach to, but outside the limits of, P. harbour, and partially removed the same, but left the part unremoved negligently and insufficiently buoyed. By reason of this negligence, the plaintiffs' sloop struck on the wreck and went down. The defendants, under their local Acts, had no general power of levying dues in P. harbour, the privileges of that harbour as a harbour of refuge being expressly reserved. There were, however, certain 'light' dues which were payable by ships entering and leaving P. harbour. By a clause in one of the local Acts it was provided that, after certain deductions, one half of the residue, if any, of these dues was to be paid to the defendants, to be applied by them in maintaining, buoying, lighting, regulating, and improving P. harbour, up to and beyond the place of the accident. The plaintiffs brought this action for damages for the loss of their sloop. The action was tried at Liverpool, and the question of the liability of the harbour authority was reserved for further consideration. The plaintiffs contended that the defendants were liable on two grounds: first, by virtue of section 4 of the Wrecks Removal Act, 1877, it being argued that the word 'may' in that section must be read 'must,' so that the enactment was obligatory and not permissive, and the case of *The Douglas*, 51 Law J. Rep. P. D. & A. 55, 89, being referred to as an authority for that proposition; secondly, because the clause in the local Act imposed a liability on the defendants.

Gully, Q.C., and *Henn Collins* (*Kennedy* with them) for the plaintiffs.

Russell, Q.C., and *Aspland* for the defendants.

KAY, J., thought that section 4 of the Wrecks Removal Act, 1877, was permissive and not obligatory, and that *The Douglas* was not a decision to the contrary. He held, however, that the clause in the local Act did impose a liability on the defendants in respect of the approaches to P. harbour; and, accordingly, he gave judgment for the plaintiffs.

Queen's Bench Division. April 11. } BENSCHER *v.* COLEY.

Practice—Trial—Motion for Judgment before Divisional Court—Appellate Jurisdiction Act, 1876, *s.* 17—*Rules of Court, Order XXXVI., Rule 22a, and Order LVIIa.*

This was an action tried before MANISTY, J., and a common jury, on March 15, when a verdict was given in favour of the defendant. The learned judge, however, at the trial doubted whether any evidence had been adduced to support such a verdict, and refused to give judgment, leaving the defendant to move for judgment.

Finlay, Q.C. (*J. F. Clerk* with him) now appeared, on behalf of the defendant, to move for judgment.

Edward Pollock, for the plaintiff: It is submitted that this Court has no jurisdiction to entertain such a motion. By the Appellate Jurisdiction Act, 1876, s. 17, it is provided that 'every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single judge; and all proceedings in an action, subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, shall, so far as is practicable and convenient, be tried and taken before the judge before whom the trial took place; provided, nevertheless, that Divisional Courts of the High Court of Justice may be held for the transaction of any business which may, for the time being, be ordered by Rules of Court to be heard by a Divisional Court,' &c. By Order XXXVI., Rule 22*a*, it is provided that, 'upon the trial of an action, the judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge.' Order LVII*a* contains an enumeration of the matters to be taken before a Divisional Court, and motions for judgment are not among them. In Wilson's second edition of the Judicature Acts, at page 317, the learned author, after commenting on section 17 of the Act of 1876 and Order LVII*a*, remarks that Order XXXVI., Rule 22*a*, 'prescribes the courses open to the judge at the trial of an action. He may order judgment to be entered. He may adjourn the matter for further argument, which must take place before himself. He may leave the matter at large for either party to move for judgment as they think fit; in which case, again, the application must be made to the judge himself. There is no longer

any power to leave the decision of a case to a Divisional Court.'

Per Curiam (GROVE, J., and FIELD, J.): It has frequently been the practice for a Divisional Court to entertain motions of this kind; and the words, 'so far as is practicable and convenient,' contained in section 17 of the Act, 1876, have been considered as a sufficient authority for a judge to reserve such a motion for the determination of a Divisional Court.

Objection overruled.

Probate, Divorce, and Admiralty Division. April 3, 5. } THE BIANCA.

Practice—Collision—Third Party—Order XVI., Rules 18, 21—*Judicature Act*, 1873.

This was an action for damage by collision, brought by the owners of the steam tug Gamecock, against the owners of the ship Bianca, which at the time of the collision was in tow of the steam tug Rescue.

The defendants alleging, amongst other things, that the collision was due to the disobedience of the Rescue to the orders of the Bianca, and having obtained the necessary leave, served the owners of the Rescue with a notice, under Order XVI., Rule 18.

Roscoe, for the defendants, applied in chambers for directions, under Order XVI., Rule 21.

Kennedy, for the plaintiffs, opposed the application.

Phillimore for third parties.

Cur. adv. vult.

April 5.—BUTT, J., declined to give directions, as it was probable that questions might arise between the defendants and the third parties totally distinct from those between the plaintiffs and the defendants. The plaintiffs would thus be embarrassed. He, therefore, dismissed the third parties from the proceedings.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
April 6.

BALFOUR *v.* COOPER.

Charge on Land—Trust to raise—Power to raise—Rate of Interest—Irish Rate—Land in Ireland.

Appeal from PEARSON, J.

By a marriage settlement, lands in Ireland were limited, after a life estate to the husband, to the use of trustees for the term of 1,000 years, upon trust to raise a sum of 15,000*l.*, in the event which happened, by way of portions for the younger children of the marriage, to be divided between them in such shares as the husband should appoint. Nothing was said as to the interest which was to be paid on the portions from the time at which they should become raisable.

The trust appointed a portion of 4,000*l.* in favour of Lady Heneker, one of the younger children, and directed that it should bear interest at the rate of 5*l.* per cent. from the time at which it should be raisable.

After the death of the husband this action was brought to carry into execution the trusts of the term, and in the action the question arose whether interest on the portion was to be allowed at the rate of 4*l.* or 5*l.* per cent.

Pearson, J., on the authority of *Young* v. *Lord Waterpark*, 13 Sim. 199, decided that interest could be allowed only at the rate of 4*l.* per cent., ordinarily given by the Court of Chancery.

The trustees of Lady Heneker's settlement appealed.

Robinson, Q.C., and *Owen*, for the appellants, argued that, the lands being in Ireland, the rate usually allowed there, viz. 5*l.* per cent., should be given; and further, on the authority of *Lewis* v. *Freke*, 2 Ves. Jun. 507, that the person who had power to direct the raising of a portion had also power to direct the rate of investment, and here the interest had been fixed at 5*l.* per cent.

Kekewich, Q.C., and *Latham contrà.*

Their LORDSHIPS distinguished the case from *Lewis* v. *Freke* and similar cases, in which there was merely a power to charge an estate with a sum of money, whereas here there was a direct trust for the purpose; but decided that the lands being exclusively Irish, the Irish rate of interest, viz. 5*l.* per cent., must be allowed. In *Young* v. *Lord Waterpark* the settlement included lands in Ireland and England, and it would have been impracticable to give a different rate of interest with respect to the English and Irish lands.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
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April 13.

In re BROWN. WARD *v.* MORSE.

Practice—Claim—Counter-claim—Costs—Apportionment of.

Appeal from CHITTY, J. The case is noted *ante*, p. 23.

J. G. Wood for the appellant.

Ince, Q.C., and *Beddall, contrà*, were not called upon.

Their LORDSHIPS affirmed the decision; and dismissed the appeal, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
March 21.

BOYER *v.* BANCROFT.

Lease—Exception—Ownership 'usque ad Cœlum'—Trespass by Building—Injunction.

The defendant was the lessee of a house, 18 Berkeley Square, which stood back to back with 20 Bruton Street which was occupied by the plaintiff. The two houses originally belonged to the same landowner, who, by a lease dated in 1833, had demised 18 Berkeley Square to the predecessor in title of the defendant, including in such demise a room on the ground floor occupying part of the site (marked B. on the plan) of 20 Bruton Street, and also a library built over it on the first floor, but projecting over a larger portion of the site. The cellars, vaults, and passages under the room on the ground floor were, however, excluded from the demise.

By another lease, dated in 1836, he demised 20 Bruton Street to the predecessor in title of the plaintiff, including the piece of ground marked B., 'except all the rooms and buildings now erected, or which may hereafter be erected in lieu thereof, over and above the basement story of the piece of ground marked B.'

Subsequently a closet had been built against the back of 18 Berkeley Square, above the library. The defendant having taken down this closet, and begun to erect a bath-room in its place, occupying, however, a somewhat larger space, the plaintiff brought this action for an injunction to restrain him from so doing.

Hastings, Q.C., and *Speed*, for the plaintiff, contended that he, as owner of the soil, was entitled to it *usque ad cœlum*, and the defendant had no right to substitute for the closet any erection occupying a larger space, notwithstanding the existence of still larger buildings between the new erection and the ground.

Kekewich, Q.C., and *Dauglish*, for the defendant, contended that he was not only entitled to the rooms over the piece of ground marked B., but also to the stratum of air above them *ad cœlum*.

KAY, J., granted the injunction, on the ground that nothing passed by the demise of the rooms over B., either above or below, beyond what was actually granted; and that, although it must be assumed that the closet was rightfully built, yet the defendant, by building in place of it anything which would occupy a larger space, was committing a trespass to that extent, and could be restrained accordingly.

Chancery Division.
KAY, J.
April 12.

In re J. HEWITT. THE MAYOR OF GATESHEAD *v.* HUDSPETH.

Will—Construction—Gift, whether charitable—Gift of Fund, the Interest to be expended in 'Acts of Hospitality or Charity.'

The testator by his will directed the sum of 2,800*l.* to be raised by his trustees out of such part of his personal estate not specifically bequeathed as might lawfully be appropriated to charitable purposes, upon trust to pay to the treasurer of the corporation of Gateshead, for the mayor, aldermen, and burgesses thereof, the sum of 1,000*l.*, to be invested on the security of any of the funds of the Local Board of Health or Corporation of Gateshead, the year's interest of such legacy to be paid to the mayor, 'to be expended by him in acts of hospitality or charity' at such time and in such way as he might think best. The corporation and treasurer of Gateshead brought this action as legatees for administration. The trustees of the will demurred.

Rigby, Q.C., and *Dunning* for the demurrer.

W. Pearson, Q.C., and *Brodrick* for the plaintiffs.

KAY, J., held that the bequest was not confined to charitable purposes only, and was therefore void.

Demurrer allowed. No costs.

Chancery Division.
KAY, J.
April 12.

In re WEBSTER. WIDGEN *v.* MELLO.

Will—Construction—Substitution—'To all the Children of A. or, in event of Decease, to their Descendants.'

The testator, by his will, bequeathed certain personal property 'to all the children of my dear departed wife's sister, M. H. M., or, in event of decease, to their descendants, share and share alike.' M. H. M. had six children, five of whom were living at the date of the will, and also survived the testator; the other child died before the date of the will, leaving issue.

The question was, whether the issue of the child who died before the date of the will were entitled to take under the gift.

W. Pearson, Q.C., Graham Hastings, Q.C., Robinson, Q.C., Kekewich, Q.C., Rigby, Q.C., Horsburgh, W. Baker, Welby King, Hughes, and *Farwell* appeared.

KAY, J., held that the case did not come within any of the established exceptions to the rule laid down in *Christopherson* v. *Naylor*, 1 Mer. 320; that that rule,

therefore, applied; and that the issue of the child who died before the date of the will were not entitled to take.

Chancery Division. Kay, J. April 14. } *In re* Watson, Kipling, & Co.

Company—Winding-up—Rates—Claim for Rates levied subsequently to Commencement of Winding-up.

This was a summons by a rating authority asking that the amount of certain rates assessed on the property of the company subsequently to the commencement of their winding-up might be paid in full. The company's property consisted of blast furnaces and chemical works used for manufacturing purposes. Prior to the making of rates the manufacture ceased to be carried on, but the liquidator had caused several of the blast furnaces to be kept alight, and the works had been used for the storage of certain plant. No profit, however, of any kind was made by the carrying on of business.

Northmore Lawrence, for the applicants, argued that no distinction could be drawn between rates and rent, and that, as the liquidator had retained possession of the property for the convenience of the winding-up, the rates ought to be paid in full.

Rigby, Q.C., and *W. W. Cooper* for the liquidator.

Kay, J., held that the case of a rating authority was not analogous to that of a landlord. The reason why the Court allowed the landlord to distrain for rent accrued after a winding-up was because it was inequitable that he should be kept out of his property without being paid for it. But this principle did not apply to a rating authority, who ought to show a much higher equity—viz. that there had, at the least, been a beneficial occupation or enjoyment of the property by the liquidator. In this case there had been no such beneficial occupation as rendered it right that the rates should be paid in full. He, therefore, refused the summons.

Chancery Division. Chitty, J. April 9. } *In re* The Campden Charity, Kensington.

Charity—Church Building Amendment Act, 1845 (8 & 9 *Vict. c.* 70), *s.* 22—*Apportionment of Charity Funds—Jurisdiction of the Court.*

Petition.

Where a parish has been divided into district parishes, and a charity fund, originally belonging to the mother parish, has been apportioned by the Court under the Church Building Amendment Act, 1845, such apportionment is not final, and may be altered, from time to time, by the Court, when the distribution of population or other circumstances shall make such alteration more conducive to the objects of the charity.

Ince, Q.C., and *Lewin* for the petition.

Davey, Q.C., and *Cecil Russell* for the Attorney-General.

Chancery Division. Pollock, B. (for Pearson, J.) April 9. } Green *v.* Humphreys.

Statute of Limitations—Acknowledgment—'At Christmas both Principal and Interest will have been paid in full.'

This was an action by the executors of John Humphreys, deceased, claiming, against the defendant, payment of 328*l.*

It was proved that this amount was due in account from the defendant to the plaintiffs' testator; but no payment for principal or interest had been paid to the testator or the plaintiffs for upwards of six years before the commencement of the action.

On October 18, 1879, the defendant wrote to the testator as follows: 'I thank you for your kind intentions to give up the rent of Tynybwzvydd next Christmas; but, I am happy to say, at that time both principal and interest will have been paid in full.'

Higgins, Q.C., and *George Henderson* for the plaintiffs.
Crossley, Q.C., and *Northmore Lawrence* for the defendant.

Pollock, B., held that this was an unconditional acknowledgment of debt, sufficient to take the case out of the Statute of Limitations.

Chancery Division. Pearson, J. April 14. } The Lydney and Wigpool Iron Ore Company (Limited) *v.* Bird.

Plaintiffs, a Limited Company—Companies Act, 1862, *s.* 69—*Order LV., Rule* 2—*Security for Costs—Time to apply.*

This was an action commenced on July 6, 1882, by the plaintiffs, a limited company, claiming, from the defendants, James Bird and another, payment of 10,000*l.* which they were alleged to have received on behalf of the company. On December 15, 1882, the plaintiffs delivered an amended reply to the amended statement of defence of the defendant James Bird. Shortly afterwards the plaintiffs gave notice of trial.

On February 12, 1883, the defendant, James Bird, took out a summons asking that the plaintiffs might be ordered to give security for the costs of the action. The chief clerk was of opinion that the plaintiffs should give security for 200*l.* The summons was now adjourned into Court.

Swinfen Eady for the summons.

Bunting, for the plaintiffs, submitted that the application was made too late.

Pearson, J., said that the simple question was, whether the defendant who asked for security was entitled to it at the time he made his application. He thought the conclusion arrived at by the chief clerk a very reasonable one, and he confirmed it. The plaintiffs must pay the costs of the adjournment into Court.

Queen's Bench Division. April 3. } HANNINGS *v.* WILKINSON.

Discovery—Action for Penalties.

Application by the defendant (referred by HAWKINS, J., at chambers to the Court) to rescind a master's order for discovery of documents, on the ground that the action was an action for penalties.

R. V. Williams for the defendant.

Lumley Smith, Q.C. (*Erskine Pollock* with him) for the plaintiff.

The COURT (WILLIAMS, J., and MATHEW, J.) held that an order for discovery could not be made against a defendant in an action for penalties, and that the order of the master must accordingly be rescinded.

Queen's Bench Division. (*Magistrates' Case*). April 16. } BRIGGS (APPELLANT) *v.* SWANWICK (RESPONDENT).

Fish—36 & 37 Vict. c. 71, s. 15—Device for catching Fish—Placing a Device in inland Water—Ancient Weir constructed with permanent Trap.

Case stated by justices.

The appellant was lessee of a mill and part of a river comprising a weir, constructed in 1838, in such a manner that, on raising the paddles, fish descending the stream were swept into a trap below the weir. On June 2 the appellant had caused some of the paddles to be raised, and there were some eels and other fish in the trap. By section 15 of 36 & 37 Vict. c. 71, it is made an offence between January 1 and June 2 to 'place in any inland water any device whatsoever to catch or obstruct any fish descending the stream.'

On the hearing of an information, under the above section against the appellant, the justices convicted.

Dugdale, Q.C., for the appellant, contended that the conviction was bad, because the weir and trap had been erected as a permanent structure before, and was in existence in its present state at, the passing of the Act; and, also, because the appellant did not 'place' the trap within the meaning of the Act.

Willis Bund, for the respondent, was not called on.

The COURT (FIELD, J., and MATHEW, J.) affirmed the conviction, holding that the permanence of the structure was immaterial; and that the appellant, when he raised the paddles, set the trap and placed a device within the section.

Table of Cases.

HOUSE OF LORDS.

House of Lords. April 23, 24. } JUSTICES OF LANCASHIRE *v.* MAYOR, &C., OF ROCHDALE.

Highway—Liability to repair main Road—Road ceasing to be a Turnpike Road—Highway and Locomotives Amendment Act, 1878 (41 & 42 *Vict. c.* 77), *s.* 13.

This was an appeal from the judgment of the Court of Appeal (reported 51 Law J. Rep. M.C. 1), which reversed one of the Queen's Bench Division (50 Law J. Rep. M.C. 97).

Gorst and *Blair* for the appellants.

Sir H. Giffard and *F. O. Crump* for the respondents.

Their LORDSHIPS (LORD BLACKBURN, LORD BRAMWELL, and LORD FITZGERALD) reversed the judgment of the Court of Appeal.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. COTTON, L.J. FRY, L.J. April 12. } *Ex parte* PHIPPEN. *In re* PHIPPEN.

Bankruptcy—Petition founded on Judgment Debt—Pending Appeal from Judgment—Adjudication—Bankruptcy Act, 1869, *ss.* 8, 9.

The plaintiff, in an action, obtained judgment for a debt, the defendant obtaining judgment on a counterclaim for a larger sum. The Court of Appeal found a large sum due to the plaintiff. The defendant appealed to the House of Lords. Before the hearing of the final appeal the plaintiff issued a debtor's summons against the defendant for his judgment debt. On an application by the defendant to dismiss the summons, the registrar stayed proceedings pending the appeal. The Court of Appeal held that this ought only to have been done on security being given for the debt. The security not being given, the defendant was adjudicated bankrupt on a petition presented by the plaintiff.

The defendant appealed; and at the hearing it appeared that his appeal to the House of Lords would probably be heard within a very short time.

Cooper Willis, Q.C., and *R. Vaughan Williams* for the appellant.

Millar, Q.C., and *A. C. Nicoll* for the creditor.

Their LORDSHIPS held that though as a rule, where a bankruptcy petition is founded on a judgment debt, the Court will not, pending an appeal from the judgment, make an order of adjudication, yet, under special circumstances, it would do so. In this case the Court of Appeal had already decided that the proceedings on the debtor's summons ought not to be stayed unless security were given; and their lordships could not now stay the proceedings on the petition without acting in direct opposition to that order. The appeal must, therefore, be dismissed.

Court of Appeal. BRETT, M.R. BOWEN, L.J. April 17, 18. } THE QUARTZ HILL CONSOLIDATED MINING COMPANY (LIMITED) *v.* EYRE.

Action—Company—Maliciously presenting Petition to wind up Company—Action maintainable without Proof of special Damage.

Action for falsely and maliciously, and without reasonable and probable cause, presenting and advertising a petition to wind up the plaintiff company.

The defendant was an original allottee of 100 shares in the plaintiff company, which was brought out in 1881. In November, 1881, he contracted, through his brokers, to sell the shares, and, on December 23, executed a transfer. On December 29, the price of the shares having fallen considerably, the brokers wrote to the defendant that the purchaser had failed, and that they must return the shares. The transfer was, in fact, registered on January 12, 1882. On January 31 the defendant presented a petition for the winding up of the company, believing, at the time, that he was still a shareholder; but, as soon as he discovered that he was not, he gave notice to the plaintiffs that he wished to withdraw the petition, but was unable to do so because another shareholder had appeared in support of it. Ultimately, the petition, which alleged that the company had been instituted by fraud, and could not be carried on profitably, and which had been published by advertisement, as required by the statute, was dismissed by BACON, V.C., without costs.

STEPHEN, J., at the trial of the present action, nonsuited the plaintiffs upon the ground that no legal damage had been proved; the only damage proved being the extra costs as between solicitor and client payable by the plaintiffs.

The plaintiffs obtained a rule *nisi* for a new trial in the Court of Appeal, the Divisional Court having previously refused to grant one.

Moorsom (with him *E. Clarke, Q.C.*), for the defendant, showed cause.

Murphy, Q.C., and *Lane*, for the plaintiffs, in support of the rule.

Their LORDSHIPS made the rule absolute; holding that although an action would not lie for the mere bringing of a civil action, even though it was brought falsely, maliciously, and without reasonable and probable cause, yet the present action most resembled bankruptcy proceedings, in respect of which it had been held that an action would lie if those proceedings had been commenced falsely, maliciously, and without reasonable and probable cause.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
BOWEN, L.J.
April 19.

THE ALEXANDRIA WATERWORKS COMPANY (LIMITED) *v.* MUSGRAVE (SURVEYOR OF TAXES).

Income Tax—English Company carrying on Business Abroad — Debenture Bonds — Interest on, paid to Foreigners resident Abroad—5 & 6 Vict. c. 35, s. 100, Schedule D, Rule 4, ss. 102, 159.

Appeal from the judge of the Queen's Bench Division confirming an assessment to income tax.

The appeal raised the question whether the Alexandria Waterworks Company, an English company carrying on business abroad, was entitled, in respect of interest paid by the company to holders of debenture bonds residing abroad, to a deduction on the amount of income tax assessed upon the profits of the company.

The Queen's Bench Division held that no such deduction could be made.

The Alexandria Waterworks Company appealed.

Charles, Q.C., and *Radcliffe* for the appellant company.

The Solicitor-General and *Dicey*, for the respondent, were not called on.

Their LORDSHIPS dismissed the appeal; holding that no such deduction could be allowed, regard being had to the express words of 5 & 6 Vict. c. 35, s. 100, Schedule D, Rule 4.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
FRY, L.J.
April 19.

Ex parte STUBLEY. *In re* STUBLEY.

Bankruptcy—Composition—Small Amount of—Resolution for—Registration.

This was an appeal from a decision of the CHIEF JUDGE in Bankruptcy.

On November 25, 1882, W. R. Stubley filed a liquidation petition in the Leeds County Court. At the first meeting of his creditors on January 29, 1883, he produced a statement of affairs showing unsecured debts 2,053*l.* 14*s.* 7*d.*, of which 33*l.* 11*s.* 1*d.* were preferential claims which would have to be paid in full. He had also some secured debts, the value of the securities being estimated as equal to the amount of the debts. His assets were stated to be 189*l.* 13*s.*, or, deducting the preferential debts, 156*l.* 1*s.* 11*d.*

The creditors resolved to accept a composition of 1*s.* 3*d.* in the pound, to be paid within twenty-one days after the registration of the resolutions, and to be secured.

The resolutions were confirmed on February 8, and were afterwards registered by the registrar, one creditor for 400*l.* opposing.

The County Court judge affirmed the decision of the registrar. On appeal to the Chief Judge the order for registration was discharged on the ground that the resolutions were passed in the interest of the debtor.

The debtor appealed.

J. E. Linklater for the appellant.

Cooper Willis, Q.C., and *Finlay Knight* for the creditor.

Their LORDSHIPS thought that the principles applicable to cases of this kind were very well established, and the only question now was as to their application. The duty of the registrar, when he was asked to register resolutions, was purely ministerial; he had only to see whether the provisions of the Act had been complied with; and, if they had, he was bound to register. It was very possible that the majority of the creditors might prefer a secured composition of 1*s.* 3*d.* in the pound, to be paid within twenty-one days, to the chance of getting more in a bankruptcy after great delay. The onus of proof was on those who asserted that the resolutions were not passed *bonâ fide* in the interests of the creditors affirmatively, to prove it. In this case, the burden had not been discharged by the creditor who opposed the registration. The appeal, therefore, was allowed, and the order of the Chief Judge discharged; but no costs were allowed on either side.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
April 16, 20.

THE RENPOR.

Salvage—Life Salvage—Ship lost—Special Agreement.

Appeal from a decision of Sir R. PHILLIMORE allowing a demurrer to a statement of claim.

The steamer Mary Louisa, while on a voyage from

Newcastle to New York, observed the steamer Renpor signalling for assistance. The Renpor had been stove in by ice which she had encountered, and was making a good deal of water. The following agreement was then entered into at the request of the captain of the Renpor: 'It is hereby agreed between Thomas Gibb, master of the steamer Mary Louisa, and Robert Osborn, master of the steamship Renpor, that the above steamer Mary Louisa agrees to stay by me, until I am in a safe position to get to port, for the sum of 1,200*l.*, my vessel being badly holed in starboard bow near collision bulkhead.' The captain of the Mary Louisa had received orders not to render salvage services except to save life. The Mary Louisa lay by the Renpor during the night, and subsequently, signals of distress having been made, took her crew on board. The Renpor soon afterwards sunk. The action was to recover the 1,200*l.* due under the agreement, or such other sum as the Court might think just.

Sir R. Phillimore allowed a demurrer to a statement of claim in which the above facts were alleged.

The plaintiffs appealed.

A. Charles, Q.C., and *Gainsford Bruce* for the plaintiffs.

W. Phillimore, for defendants, was not called on.

Their LORDSHIPS dismissed the appeal; holding that something more than life must be saved to entitle salvors to life salvage, and that, as nothing had been saved which would realise a fund out of which salvage could be paid, the plaintiffs could not recover; also that the agreement meant that the Mary Louisa was to remain by the Renpor until she was in a safe position to get to port; but under the circumstances, in order to make the defendants liable, the words 'or sinks' would have to be read into the agreement.

Court of Appeal.
BRETT, L.J.
BOWEN, L.J.
April 18, 19, 20.

POUNTNEY *v.* CLAYTON.

Railway Company—Mines—Lands compulsorily taken by Railway Company sold as superfluous Land—Right to Support of Surface—Railways Clauses Consolidation Act, 1845, *ss.* 77, 78, 79.

Appeal from a decision of the Divisional Court, discharging a rule for a new trial, which raised the question whether the purchaser of superfluous lands, which had been compulsorily taken by a railway company under the Railways Clauses Consolidation Act, 1845, acquires a right of support as against the owner or lessee of the mines and minerals under the surface.

At the trial, WILLIAMS, J., directed the jury that a purchaser of land sold as superfluous land by a railway company, and originally purchased by them under the powers of the Railways Clauses Consolidation Act, 1845, had the same right of support as an ordinary purchaser of land. The jury found a verdict for the plaintiff. The Divisional Court (DENMAN, J.; MANISTY, J., *dissentiente*) discharged a rule *nisi* for a new trial granted upon the ground of misdirection.

The defendant appealed.

Jelf, Q.C., and *Bosanquet, Q.C.*, for the defendant.

H. Matthews, Q.C., and *Poyser* for the plaintiff.

Their LORDSHIPS allowed the appeal; holding that the rights of the railway company were governed by sections 77, 78, and 79 of the Railways Clauses Act, 1845; that the company had an option to purchase the land either with or without the minerals, and, in default of such purchase, the owner of the minerals might work them to the utmost extent as against the company, who however, by payment of compensation, could prevent the mines being worked, if by so doing the railway would be injured; and that the plaintiff, as purchaser from the railway company, acquired no greater rights than the company possessed.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
April 24.

WALL *v.* TAYLOR.
WALL *v.* MARTIN.

Musical Composition—Sole Liberty of performing—Place not of Dramatic Entertainment—Penalty, or Damages—3 & 4 Wm. IV. c. 15, *s.* 2—*5 & 6 Vict. c.* 45, *ss.* 20, 21.

Appeal by the defendants from the Queen's Bench Division.

The case is reported 51 Law J. Rep. Q.B. 547.

This appeal raised the question whether the owner of the sole liberty of representing or performing a musical composition, which is performed without permission at a place which is not a place of dramatic entertainment, can recover the penalty given by 3 & 4 Wm. IV. c. 15, s. 2, or whether he can only recover damages.

The Queen's Bench Division gave judgment for the plaintiff for the penalty.

The defendants appealed.

Wilberforce and *Fox* for the defendants.

Fillan for the plaintiff.

Their LORDSHIPS (COTTON, L.J., dissenting) affirmed the judgment of the Queen's Bench Division, without costs.

HIGH COURT OF JUSTICE.

Chancery Division.
FRY, J.
March 13.
PEARSON, J.
April 20.

Re LESLIE. LESLIE *v.* FRENCH.

Policy—Premiums—Salvage—Lien—Husband and Wife.

Shortly before the marriage of Mr. and Mrs. Leslie, Mrs. Leslie had effected a policy on her own life for 5,000*l.* Mr. Leslie paid all premiums during the coverture. He predeceased his wife. On the occasion of the marriage of their daughter with a Mr. Trevelyan, Mr. and Mrs. Leslie had joined in assigning the policy to trustees of a settlement then made to secure the payment of a sum of 6,000*l.*, which Mr. Leslie covenanted to pay to the trustees on the death of Mrs. Leslie. Mr. Leslie covenanted with the trustees to pay the premiums during his own life. The question in this action was whether Mr. Leslie's estate was entitled to a lien on the policy for the amount of the premiums.

Cozens-Hardy, Q.C., and *C. T. Simpson* for the plaintiff, the representative of Mr. Leslie.

Cookson, Q.C., and *Macrae* for Mrs. Leslie.

Medd for the trustee of Mrs. Trevelyan's settlement.

Glasse, Q.C., and *Gardiner* for other parties.

April 20.—PEARSON, J., gave the judgment of FRY, L.J., to the effect that there was no lien.

Chancery Division.
KAY, J.
April 3.
} GOULD *v.* TRIPP.

Renewable Leaseholds—Impossibility of Renewal—Fund for Renewal—Tenant for Life and Remainderman.

By an indenture dated June 21, 1883, R. F. Gould assigned certain leaseholds to trustees for the residue of a term of twenty-one years upon trust out of the annual proceeds to pay the rents reserved by the lease or any renewed lease, and on further trust to renew the lease as often as it should be renewable by the custom of the Dean and Chapter of Exeter, who were the lessors; and for that purpose out of the annual proceeds, or by other ways and means, to raise moneys for the expenses of renewal, and to pay the residue of the annual proceeds to G. J. Gould and W. Gould, as tenants in common.

By his marriage settlement, dated June 22, 1883, G. J. Gould assigned his moiety of the leaseholds to trustees on trust for himself for life, and after his death for his wife, with remainders in trust for their children and issue. By a later deed the leaseholds were assigned in moieties, one moiety being assigned upon the trusts of the marriage settlement.

R. F. Gould and G. J. Gould died in 1838 and 1853 respectively.

From the date of the marriage settlement the trustees set aside a fund for renewal, and renewed the lease from time to time up to 1862, the last renewal being for twenty-one years from November, 1861. In 1867, owing to alterations in the laws as to ecclesiastical property, it became impossible to obtain any further renewal of the lease, which accordingly expired in November, 1882. Meanwhile the trustees had continued to set aside a yearly sum out of the proceeds of the settled moiety; and, at the date of the expiration of the lease, the accumulations amounted to the sum of 1,552*l.* 18*s.* 3*d.*

This was a special case, raising the question whether the accumulated fund should be treated as income or capital.

Badcock, for persons entitled to life interests under the settlement, contended that so much of the fund as represented rents which had accumulated during the life interests should be treated as income.

Northmore Lawrence, for the remaindermen, claimed the whole fund as capital.

Ingle Joyce for the trustees.

Badcock in reply.

KAY, J., held that so much of the accumulated fund as consisted of rents retained from time to time by the trustees must be treated as capital.

Chancery Division.
PEARSON, J.
April 21.
} WILLIAMS *v.* MURRELL.

Will—Gift of real and personal Estate by different Clauses in one Mass—Contingent Interest—Interim Income of real Estate—Mixed Fund.

Further consideration.

George Dumble, by his will dated December 16, 1844, devised the residue of his real estate to trustees, in trust for his wife, Betsey Dumble, for life; and, after her death, upon trust to apply such part of the rents as should be necessary for the maintenance of his daughter, Elizabeth Dumble, until she should attain twenty-one, and, upon her attaining that age, in trust for her for life; and, after her death, upon trust to convey to her child and children who should attain twenty-one; but, if no child should attain twenty-one, as she should by deed or will appoint.

And the testator gave the residue of his personal estate to the same trustees upon trust to convert and invest, and to pay the income to his wife for life; and, after her death, to his daughter for life; and, after her death, upon trust to pay to her child and children who should attain twenty-one; but, if no child should attain twenty-one, as she should by deed or will appoint.

Elizabeth Dumble, the only child of the testator, married, and attained twenty-one, in the lifetime of her mother, survived her mother, and died in the year 1866, leaving the plaintiff, her only child, who was still an infant.

The action was brought for the administration of the testator's estate.

Higgins, Q.C., and *Gaselee*, for the plaintiff, the heir-at-law, submitted that the intermediate rents of the real estate during the period between the death of the plaintiff's mother and the absolute vesting of the real estate belonged to the plaintiff as heir-at-law.

Cookson, Q.C., and *Blakesley* for the defendant, Charles N. Williams.

Cozens-Hardy, Q.C., and *Stallard* for the other defendant.

PEARSON, J., held that the testator had really mixed up the whole of his real and personal estate in one mass. The intermediate rents of the real estate must, therefore, be accumulated, and did not belong to the heir-at-law.

Queen's Bench Division.
April 20.
} ABRATH *v.* THE NORTH-EAST RAILWAY COMPANY.

Malicious Prosecution—Preliminary Questions for Jury—Onus of Proof.

Rule by the plaintiff for a new trial as upon a verdict against the evidence, and for misdirection, in an action for malicious prosecution.

At the trial before CAVE, J., at the Durham Summer Assizes, 1882, the judge told the jury, in leaving to them the questions which it was for them to decide, that the plaintiff must satisfy them that the defendants did not use reasonable care to find out the true state of the case, and did not honestly believe the case which they prosecuted.

The Solicitor-General (*Sir F. Herschell*), *G. Bruce*, and *Walton* showed cause.

Sir H. Giffard, Q.C., and *M'Clymont* supported the rule.

The COURT (GROVE, J., and LOPES, J.) held that there had been a misdirection in regard to the onus of proof.

Rule absolute for new trial.

Table of Cases.

HOUSE OF LORDS.

House of Lords. April 24. } CHURCHWARDENS, &c., OF WEST HAM *v.* ILES.

Poor Rate—Rating of Owners under Sturges Browne's Act (59 *Geo. III. c.* 12), *s.* 19.

The defendants appealed from the decision of the Court of Appeal, reported 51 Law J. Rep. Q.B. 17; L. R. 8 Q.B. Div. 69.

Meadows White and *Mugliston* for the appellants.

The respondents did not appear.

Their LORDSHIPS (LORD BLACKBURN, LORD BRAMWELL, and LORD FITZGERALD) dismissed the appeal.

House of Lords. April 27, 30. } CORY AND SONS *v.* BURR.

Marine Insurance—Warranty 'free from Capture and Seizure'—Seizure for barratrous Breach of Revenue Laws.

The plaintiffs appealed from the decision of the Court of Appeal, reported 51 Law J. Rep. Q.B. 468; L. R. 9 Q.B. Div. 463.

The action was brought on a policy of marine insurance, containing a warranty 'free from capture and seizure.' The ship insured was seized by the Spanish revenue authorities for smuggling; and the plaintiffs had to pay a large sum of money to procure her release. The smuggling was the barratrous act of the master; and the question was, whether the seizure, being the consequence of barratry, was exempted from the warranty. The Courts below held that it was.

Webster, Q.C., Myburgh, and *Tyser* for the appellants.

Cohen, Q.C., and *J. G. Barnes,* for the respondent, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, LORD BRAMWELL, and LORD FITZGERALD) affirmed the judgment appealed from, with costs.

House of Lords. April 30. May 1. } THE LAW SOCIETY *v.* WATERLOW BROTHERS & LAYTON. THE SAME *v.* SKINNER.

Solicitor—Proctor—Acting as Proctor—6 & 7 Vict. c. 73, *s.* 2—23 & 24 *Vict. c.* 127, *s.* 26—40 & 41 *Vict. c.* 62, *ss.* 2, 3—*Rules of Probate, Divorce, and Admiralty Division.*

These were appeals from the decisions of the Court of Appeal, reported 51 Law J. Rep. Q.B. 249; L. R. 9 Q.B. Div. 1, which reversed judgments of the Queen's Bench Division.

The actions were brought for penalties for acting as proctors without qualification.

The respondents in each case were law stationers, who acted for solicitors in taking papers to the Probate Registry at Somerset House in connection with the probate of wills, and receiving probates when made out. In case difficulties arose in the course of the proceedings, they were reported to the solicitors, in whose names everything was done.

Messrs. Waterlow acted for country solicitors; Skinner for town solicitors.

The Court of Appeal held that the respondents merely acted as messengers in matters not requiring the personal attendance of qualified solicitors or proctors.

Sir H. Giffard and *G. A. Fitzgerald* (*R. T. Reid* and *Woodfall* with them) for the appellants.

Sir H. James, A. G. Willis, Q.C., and *Finlay, Q.C.,* for Messrs. Waterlow; and *E. Clarke, Q.C.,* and *Bremner,* for Skinner, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, LORD BRAMWELL, and LORD FITZGERALD) affirmed the judgment in both cases, with costs.

COURT OF APPEAL.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
FRY, L.J.
April 12.

Ex parte SPIERS. *In re* GIBSON.

Bankruptcy Petition—Debtor Abroad—Substituted Service—Intent to defeat or delay Creditors—Bankruptcy Act, 1869, *s.* 6, *subs.* 3—*Bankruptcy Rules*, 1870, *Rules* 61, 66.

On January 29 Spiers presented against Gibson, who was not a trader, a bankruptcy petition, founded upon an alleged act of bankruptcy committed by him in departing and remaining out of England, with intent to defeat or delay his creditors. After hearing evidence as to the departure of the debtor, the registrar made an order giving the petitioner leave to serve sealed copies of the petition and order upon the debtor personally in Canada, where he had gone.

The petitioner then applied, under Rule 61 of the Bankruptcy Rules of 1870, for leave to serve the petition by leaving a sealed copy of it with the debtor's wife in England, or with an adult inmate at his usual or last-known place of residence or business, or by advertisement in the *London Gazette* and the *Times*.

The registrar refused the application, and the petitioning creditor appealed.

Herbert Reed, for the appellant, contended that the Court had power to make the order under Rule 61, which provides that, if the Court is satisfied that the debtor is keeping out of the way to avoid service of a petition, it may order service to be made by delivery of the petition to some adult inmate at his usual or last-known place of residence or business, or may order that a notice be gazetted requiring the debtor to appear at the hearing of the petition on the day named, and that such notice shall be deemed to be served upon the debtor. He admitted, however, that there was no evidence to show that the proposed mode of service would be 'effectual or sufficient' within Rule 66, by which, where a debtor petitioned against is not in England, the Court may, upon being satisfied that the service will be effectual or sufficient, order service to be made in such manner and form as it shall deem fit.

Their LORDSHIPS affirmed the order of the registrar. They thought that, although a debtor has departed out of England with intent to defeat or delay his creditors, it is not a necessary inference that he is keeping out of the way to avoid service of a bankruptcy petition on him. They declined to extend Rule 61; and, therefore, dismissed the appeal.

Court of Appeal.
BRETT, L.J.
BOWEN, L.J.
April 25.

HEMMINGS *v.* WILLIAMSON.

Vestry—Person interested—Contract with Vestry—Penalty for acting after ceasing to be Member—18 & 19 *Vict. c.* 120, *ss.* 54, 60.

Action to recover penalties under the Metropolis Local Management Act, 1855, s. 54, from the defendant for acting as a vestryman while interested in a contract made with the vestry.

The defendant's brother had entered into a contract with the vestry of St. Mary, Islington, for the watering, cartage, and horse hire required by the vestry. The defendant advanced money to his brother to enable him to carry out the contract. The repayment of the advance was secured by the assignment of the contract to the defendant by his brother. After the assignment, the defendant was elected a vestryman, and attended five meetings of the vestry. It was proved, at the trial, that an attendance or signature book was provided by the vestry at every meeting, in which each member, including the defendant, who attended the meeting signed his name. There was also another book, signed by two members of the vestry, in accordance with the provisions of section 60 of the Act of 1855, in which was entered the minutes of the proceedings, and also the names of the members who signed the signature book, the latter names being copied by the clerk to the vestry into the minute book. The jury, under the direction of POLLOCK, B., found a verdict for 250*l.*, being a penalty of 50*l.* for each meeting at which the defendant had been present.

The defendant moved a Divisional Court (GROVE, J., and SMITH, J.) for a rule *nisi*, calling on the plaintiff to show cause why the verdict and judgment entered for the plaintiff should not be set aside and entered for the defendant.

The Divisional Court refused the rule *nisi*.

T. Salter, Q.C. (with him *Joyce*), now applied to the Court of Appeal to grant a rule *nisi*.

Their LORDSHIPS refused the application; holding that section 54 applied to the case of a person who, being a vestryman, is interested in a contract made with the vestry, and acts as a vestryman, notwithstanding that the contract was made before he was elected; that the defendant was interested in a contract made with the vestry within the meaning of section 54; and that the signature book and minute book signed by the two members, in accordance with section 60, were evidence of the defendant having acted as a vestryman.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
April 24, 26, 27.

THE MADELEY UNION *v.* THE BRIDGNORTH UNION.

Poor—Settlement—Abolition of derivative Settlements—39 & 40 *Vict. c.* 61, *s.* 35.

Appeal from a judgment of the Queen's Bench Division, reported 52 Law J. Rep. M.C. 17, upon a case stated by the Recorder of Bridgnorth, which raised the question whether under section 35 of the Divided Parishes and Poor Law Amendment Act, 1876, which abolished in general derivative settlements, an order of removal of a wife, and three children under the age of sixteen, is justified by proof that the father of the wife's husband was born in the union to which the removal is made, and that neither the husband nor his father acquired a settlement in his own right.

The Recorder quashed an order by which two justices had adjudged the last place of settlement of the wife and three children of a pauper to be in the parish of Madeley.

The Queen's Bench Division (FIELD, J., and CAVE, J.)

affirmed the decision of the Recorder. The Bridgnorth Union appealed.

Jelf, Q.C., and *Spearman* for the appellant union.

Bosanquet, Q.C., and *Kenyon* for the respondent union.

Their LORDSHIPS dismissed the appeal; holding that, under section 35 of the Act, an inquiry into the settlement of a pauper's grandfather could not properly be entered into; and, consequently, that the decisions of the Recorder and of the Queen's Bench Division were right.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
April 5, 6, 28.

SANDERS BROTHERS *v.* MACLEAN & Co.

Bills of Lading—Execution in Triplicate—Validity of Tender of two of three Sets.

Appeal from the judgment of POLLOCK, B., after trial with jury.

Action for non-acceptance of, and non-payment for, a cargo of iron rails sold to the defendants by the plaintiffs, under a contract made in London, by which the plaintiffs were to deliver the rails at Philadelphia, payment to be made in net cash in London in exchange for bills of lading of each cargo or shipment. The rails were shipped from Russia to Philadelphia, where the ship arrived on August 19, and completed discharging her cargo on August 26. On August 3 the plaintiffs tendered two copies of the bill of lading, which was drawn in three sets, to the defendants; but they refused to accept them. The plaintiffs then procured the third copy from Russia, and, on August 9, tendered all three copies to the defendants, who refused to accept them on the ground that they could not then forward them so as to reach Philadelphia before the arrival of the ship with the cargo.

Pollock, B., gave judgment for the defendants.

The plaintiffs appealed.

The Solicitor-General and *Wills* for the plaintiffs.

Webster, Q.C., and *Moulton* for the defendants.

Their LORDSHIPS, having reserved judgment, allowed the appeal, holding that the tender, on August 3, of the two copies of the bill of lading was a valid tender.

HIGH COURT OF JUSTICE.

Chancery Division.
POLLOCK, B.
April 27.

Re DEFRIES. NORDON *v.* LEVY.

Estoppel—Judgment—Pleadings—Waiver.

In this case the plaintiff sued, in the names of himself and wife, certain trustees; he sought to impeach an ante-nuptial agreement. The same issue was raised by him as defendant in an action of *Nordon* v. *Nordon*, brought by his wife, for specific performance of the agreement to which the defendants in this action were parties. The pendency of *Nordon* v. *Nordon* was pleaded by the statement of defence in this action. Before this trial, *Nordon* v. *Nordon* was decided by Mr. Justice Chitty, and he upheld the agreement.

Higgins, Q.C., and *Renshaw*, for the defendants, sought to use the judgment of Chitty, J., as an estoppel.

The plaintiff, in person, argued that the defendants, by not pleading the judgment by amendment, had waived their right to an estoppel.

POLLOCK, B., held that the plaintiff was estopped.

Queen's Bench Division.
March 3.

SVENSDEN *v.* WALLACE BROTHERS.

Marine Insurance—General Average—Port of Refuge—Expenses of warehousing and reloading Goods and leaving Port.

When a vessel goes into a port of refuge in consequence of an injury, whether that injury is the subject of general or particular average, the expenses of warehousing and reloading goods necessarily unloaded for the purpose of repairing the injury, and expenses incurred for pilotage and other charges in leaving the port, are the subject of general average.

Queen's Bench Division.
April 28.

Re an Application by THE GREAT WESTERN RAILWAY COMPANY *v.* THE HALESOWEN RAILWAY COMPANY.

Railway Commissioners — Jurisdiction — Agreement to refer—'Confirmed and made binding' by and scheduled to Act—Reference 'required or authorised' by any Act —Completion of Works to Satisfaction of Engineers—Condition precedent—36 & 37 *Vict. c.* 48, *s.* 8.

Argument of rule calling upon the Halesowen Railway Company to show cause why a writ of prohibition should not issue restraining further proceedings in the matter of an application by them to the railway commissioners against the Great Western Railway Company and the Midland Railway Company, and in the matter of an order made thereon, on the ground that the railway commissioners had no jurisdiction. By the Halesowen and Bromsgrove Branch Railways Act, 1865, s. 37, it is enacted that: 'The heads of agreement, bearing date April 29, 1865, between Edmund Kell Blyth on behalf of the company of the first part; Samuel Carter on behalf of the Midland Railway Company of the second part; and John Young on behalf of the Great Western Railway Company of the third part; which heads of agreement are set forth in schedule 1 to this Act, are hereby confirmed and made binding on the said companies respectively.' By clause 1 of schedule 1 it is provided that: 'The Halesowen Company agree, at their own expense, to make and complete the railways, stations, buildings, and works by this Act authorised, including a terminal station at Halesowen, with the necessary conveniences thereto, and proper sidings at the junction with the Midland Railway for the convenient interchange of traffic in passengers and goods, to the satisfaction of the respective engineers of the three above-named companies; or, in case of their difference, to the satisfaction of an engineer to be, on the application of the three companies, or any two of them, appointed by the Board of Trade; the works to be completed for a single line of rails, with land and over bridges for a double line.' By clause 2: 'From and after the time when the railways are so completed and authorised to be opened for public traffic, the Midland Company and the Great Western Company at all times, at their own joint expense and risk, shall main-

tain, manage, man, stock, work, and use the Halesowen line and works.' By clause 18: 'All differences between the three companies, or any two of them, and all questions as to the carrying into effect of the provisions of this arrangement, shall be determined by arbitration under the Railway Companies Arbitration Act, 1859, by a single arbitrator, to be, if not agreed on, appointed by the Board of Trade, with ample powers. By 36 & 37 Vict. c. 48, s. 8: 'Where any difference between railway companies . . . is, under the provisions of any general or special Act, . . . required or authorised to be referred to arbitration, such difference shall, at the instance of any company party to the difference, and with the consent of the railway commissioners, be referred to the commissioners for their decision in lieu of being referred to arbitration.'

The Halesowen Railway Company applied to the railway commissioners for an order enjoining the Midland Railway Company and the Great Western Railway Company, at all times, at their own joint expense and risk, to maintain, manage, man, stock, work, and use the Halesowen line and works.

The Great Western Company objected that the Halesowen Company had not constructed certain platforms and waiting-rooms at the junction with the Midland Railway; and raised a preliminary question of law that the commissioners had no jurisdiction.

On January 31 the commissioners gave judgment against the Great Western Company on the preliminary question. A rule *nisi* to prohibit the Halesowen Company from proceeding further having been obtained,

The Solicitor-General and *Littler, Q.C.* (with them *Balfour Brown* and *Lush-Wilson*), now showed cause.

The Attorney-General and *R. E. Webster, Q.C.* (with them *R. S. Wright*), in support of the rule.

Held, first, by SMITH, J. (GROVE, J., *dubitante*), that section 37 of the Halesowen Company's Act did not make the provisions of the agreement contained in the schedule to that Act 'provisions of any general or special Act,' and that, consequently, the commissioners had no jurisdiction to entertain the application. Secondly, by the COURT (GROVE, J., and SMITH, J.), that, it not being alleged in the application that the works were completed to the satisfaction of the engineers, the commissioners had no jurisdiction to entertain it.

Rule for prohibition made absolute, with costs.

Queen's Bench Division. April 30. } *Re* W. A. FREESTON.

Solicitor—Retainer—Preliminary Inquiry before Police Magistrate—Privilege from Arrest—Attachment for Contempt of Court.

Referred from chambers to a Divisional Court.

This was an application to release a solicitor from custody who had been arrested under a writ of attachment for not complying with an order made by Mr. Justice North for the delivery up of certain papers and payment of costs. It appeared that the solicitor in question had been retained to defend Gallagher and others at a preliminary inquiry before Sir J. Ingham, under 11 & 12 Vict. c. 42, and was arrested whilst returning home from the Police Court.

Wyatt Hart now moved for the discharge of the prisoner on the ground that he was at the time of his arrest privileged, as an advocate, from being arrested.

A. T. Lawrence, contrà, contended that the privilege from arrest did not extend to a preliminary inquiry before a magistrate under Jarvis's Act, nor yet to an attachment for disobeying an order of the High Court.

A. Cock appeared for the sheriff, but took no part in the argument.

The COURT (GROVE, J., and STEPHEN, J.) held that the privilege from arrest did not exist where there was an attachment for contempt in disobeying an order of Court. The Court abstained from expressing any opinion as to whether privilege from arrest extended, under any circumstances, to preliminary inquiries before justices.

Application refused.

Queen's Bench Division. May 1. } OSBORNE *v.* JACKSON AND TODD.

Master and Workman—Negligence of Superintendent—Foreman engaged in manual Labour—'Whilst in the Exercise of Superintendence'—43 & 44 Vict. c. 42, s. 1, subs. 2.

Appeal from Shoreditch County Court.

This was an action brought under section 1, subsection 2 of the Employers' Liability Act, 1880, which enacts: 'Where, after the commencement of this Act, personal injury is caused to a workman . . . 2. By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence,' the workman shall have the same right of compensation against the employer as if he had not been in the service of the employer.

The facts of the case were that a house in Fish Street Hill had been gutted for the purpose of rebuilding. Two galleries had been erected opposite to one another on the inside walls about seven or eight feet apart; and there were men at work on the basement below. Thomas, the foreman, standing in one of the galleries, launched a plank to a workman named Collier, standing in the opposite gallery, at the same time calling to him to take that plank. Collier could not get a sufficient hold of the plank to poise it, and the further end fell and knocked down a piece of shoring which struck and injured the plaintiff Osborne, who was one of the men at work below.

It was admitted that Thomas was a person who had superintendence entrusted to him within the definition given in section 8 of the Act.

The County Court judge, who tried the case without a jury, found that Thomas had been guilty of negligence whilst in the exercise of superintendence; and gave the plaintiff 50*l.* damages.

A rule *nisi* for a new trial had been obtained, on the ground that Thomas was not guilty of negligence whilst in the exercise of superintendence.

Nasmyth now showed cause.

Ruegg in support of the rule.

The COURT (DENMAN, J., and HAWKINS, J.) held that the foreman's order to Collier to take the plank was given in the exercise of his superintendence; that that order was given negligently, and that it caused the injury to the plaintiff; and, consequently, that the rule ought to be discharged.

Rule discharged, with costs; leave to appeal refused.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
FRY, L.J.
April 26.

Ex parte IZARD.
In re CHAPPLE.

Bill of Sale—Registration—Possession, Order, or Disposition—Bills of Sale Act, 1878, *s.* 20—*Bills of Sale Act*, 1882, *ss.* 3, 15—*Bankruptcy Act*, 1869, *s.* 15, *subs.* 5.

This was an appeal from a decision of Mr. Registrar Murray, sitting as CHIEF JUDGE, and raised a question as to the retrospective effect of section 15 of the Bills of Sale Act, 1882. On September 18, 1882, Chapple executed a bill of sale of furniture and other chattels to one Betts for 200*l.* The bill of sale was duly registered under section 8 of the Bills of Sale Act, 1878. On November 2 Chapple committed an act of bankruptcy by filing a liquidation petition. Section 20 of the Act of 1878 provides that 'chattels comprised in a bill of sale which has been, and continues to be, duly registered under this Act, shall not be deemed to be in the possession, order, or disposition of the grantor.' This section and section 8 of the same Act are repealed by section 15 of the Act of 1882, which, however, provides that 'this repeal shall not affect the validity of anything done or suffered under the principal Act (1878) before the commencement of this Act' (November 1, 1882). And section 3 of the Act of 1882 enacts that 'this Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act (1878); but, unless the context otherwise requires, shall not apply to any bill of sale duly registered before the commencement of this Act.' The question was, whether the goods comprised in the bill of sale, which was registered before the commencement of the Act of 1882, were to be deemed in the possession, order, or disposition of the grantor, in which case they would be the property of the trustee in the liquidation; or, whether the bill of sale holder was entitled to the goods under section 20 of the Act of 1878, notwithstanding the repeal of that section by section 15 of the Act of 1882. The registrar decided that section 15 was not retrospective; and, therefore, that the trustee was not entitled to the goods.

The trustee appealed.

Cooper Willis, Q.C., and *F. Cooper Willis* for the appellant.

Winslow, Q.C., and *Lyon*, for the respondent, were not heard.

Their LORDSHIPS held that the words of the section were very clear. Section 20 was repealed in such a way as not to apply to a bill of sale duly registered before the commencement of the Act of 1882, unless the context otherwise required. Here there was nothing in the context contrary to the continued existence of section 20 with regard to a bill of sale so registered. The appeal, therefore, must be dismissed.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
May 4.

THE ELIN.

Lien, Priority of—Damage—Wages earned subsequently to Collision.

Appeal from a judgment of Sir R. PHILLIMORE (reported 51 Law J. Rep. P. D. & A. 77), upon a special

case, which raised the question whether the owners of a ship who have recovered judgment against a foreign ship in an action for damage by collision, have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned after the collision.

Sir R. Phillimore held that the owners of the damaged ship had such prior right against the claim of the seamen.

The seamen appealed.

W. Phillimore for the appellants.

Hall, Q.C., and *Stokes*, for the respondents, were not called on.

Their LORDSHIPS dismissed the appeal, holding that the case was governed by the *Linda Flor*, Swa. 309, 6 W. R. 197.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
May 1, 2.
} YOUNG *v.* WALLINGFORD.

Solicitor and Client—Misrepresentation inducing Client to advance Money on Mortgage—Death of Solicitor—Personal Action.

In 1869 the plaintiff advanced 1,000*l.* to Sympson, on mortgage. Hamlin, a solicitor, who acted for both parties, negotiated the loan; and the plaintiff alleged that he advanced the money, which was paid through the hands of Hamlin, on the representation by Hamlin that the plaintiff would have an ample security, being a first charge on about eleven acres of fee simple land, with farm buildings, of which Sympson was seised in fee simple, free from incumbrances. The deed of mortgage prepared by Hamlin contained recitals to this effect. Sympson died in 1879, and made Hamlin his executor and devisee in trust. Hamlin died in 1881, and made the defendants his executors and devisees in trust. After Hamlin's death, the plaintiff ascertained for the first time that part of the land comprised in his security was leasehold for lives, and not fee simple; and also that Hamlin had a prior mortgage for 500*l.* on part of the land. He then brought this action, claiming repayment of the 1,000*l.* from Hamlin's estate, and that Hamlin's mortgage for 500*l.* might be postponed to that of the plaintiff, and also foreclosure and sale of the property comprised in his mortgage. As against Hamlin's estate, the defendants, amongst other defences, contended that the plaintiff had shown no right of action which was enforceable after the death of Hamlin and against his personal representatives.

Marten, Q.C., and *Badcock* for the plaintiff.

Millar, Q.C., and *Theodore Ribton* for the defendants.

Marten replied.

BACON, V.C., held that the misrepresentation by Hamlin was established on the evidence; but that the cause of action was not maintainable, since it was not brought in Hamlin's lifetime. His lordship, therefore, dismissed so much of the action as sought to charge Hamlin's estate; and gave judgment for foreclosure, with a declaration postponing Hamlin's mortgage for 500*l.* to the plaintiff's mortgage.

Chancery Division.
KAY, J.
April 13, 14, 16.
} *In re* ALFRETON'S TRUST ESTATES.

Power — Appointment — Construction of — Appointee whether entitled to share in unappointed Fund.

By a settlement in 1842 lands were conveyed to trustees upon trust either in the lifetime of W. P. M. with his consent in writing, or else not till after his decease, to raise 12,000*l.* and pay the same unto and between the two daughters of W. P. M. as he should by deed attested by two witnesses appoint, and in default of appointment to the two daughters equally, to be vested in them at twenty-one or marriage, and to be paid at such age or time if the same should happen after the decease of W. P. M.; but, if the same should happen in his lifetime, then immediately after his decease, 'unless he should signify his consent in writing under his hand and seal that the said respective shares should be raised and paid in his lifetime.'

In 1844 W. P. M. by deed attested by two witnesses reciting the power and that he was desirous of making some immediate as well as future provision for his daughter E. (who was about to be married), appointed that the trustees should raise two sums of 5,000*l.* and 1,000*l.*,—the 5,000*l.* immediately, and the 1,000*l.* immediately after his decease—and pay the same to the said E. 'to the intent that the payment of the portion or portions of the said E. under the said settlement may as to the said sum of 5,000*l.* be accelerated and take effect according to the true intent and meaning of these presents, anything in the said settlement to the contrary notwithstanding.' W. P. M. died without making any further appointment.

Kekewich, Q.C., and *Hornell*, and *Rigby, Q.C.*, and *Bridgman* appeared.

KAY, J., held that E. was entitled to one moiety of the unappointed part of the 12,000*l.*, in addition to the sums of 5,000*l.* and 1,000*l.* so appointed to her.

Chancery Division.
KAY, J.
April 9. May 7.
} *In re* HAWTHORNE. GRAHAM *v.* MASSEY.

Jurisdiction—Foreign Law—Right to immovable Property situate Abroad depending on 'Lex loci.'

This was an action to recover a share of the proceeds of sale of a house in Dresden, which had been sold by the defendants' testator. The plaintiff's case was that upon the death of S. H., in 1875, a share in the house descended to G. H. according to Saxon law; that from G. H., according to the same law, it devolved upon the plaintiff; and that, by the same law, the defendants' testator, having sold the house, was accountable to the plaintiff for a corresponding share of the purchase-money. This claim was denied by the defendants, who alleged that their testator was solely entitled. All the parties were resident within the jurisdiction.

Graham Hastings, Q.C., and *Druce* for the plaintiff.

W. Pearson, Q.C., and *Creed* for the defendants.

Robinson, Q.C., and *Joliffe* for other parties interested.

KAY, J., held, this being a case of a contested claim to land situate in Dresden, where the question must be determined by the law of Saxony as to immovables, and where the only ground for instituting proceedings in this country was the fact that the defendants were resident here, the Court had no jurisdiction to adjudicate on the case, and that the action must be dismissed.

Chancery Division.
KAY, J.
May 7.
JESSE *v.* LLOYD.

Jurisdiction—Settled Estate—Rebuilding Mansion House—Recouping Trustee Sums expended.

By the will of J. Jesse, who died in 1863, estates were settled upon legal limitations under which the plaintiff was tenant for life. Soon after the testator's death the mansion house was burnt down. The sole trustee of the will had expended, in addition to the insurance moneys, a sum of 2,000*l.* out of his own pocket in rebuilding the mansion house. It was admitted that this expenditure was very beneficial to the estate. There were funds in Court of 497*l.* 3*s.* 3*d.* and 545*l.* 6*s.* 11*d.* Consols which were liable to be reinvested in land under the will. By the decree in this action an inquiry had been directed what sum was necessary to complete the restoration of the mansion house, and how the same ought to be raised. A petition was presented by the trustee asking that the 2,000*l.* expended by him (which had been disallowed by the chief clerk) might be repaid to him by sale of the funds in Court and sale or mortgage of the settled estates.

Graham Hastings, Q.C., and *Levett* for the petitioner.

W. Pearson, Q.C., Sir Arthur Watson, and *Lees Knowles* for the respondents.

KAY, J., held that the Court had no jurisdiction to order a sale or mortgage of the settled estates or to authorise the expenditure for the proposed purpose, even of moneys which were subject to a trust for reinvestment in land; but, it appearing that the estate had been benefited by the outlay of the trustee to the full amount of the funds in Court, and that the outlay had been *bonâ fide* made under the impression that it would be repaid out of the estate, his lordship, though considering the conduct of the trustee irregular, on the authority of *Vyse* v. *Foster*, 42 Law J. Rep. Chanc. 245, ordered that the trustee should be recouped his outlay to the extent of the funds in Court, but no further.

Chancery Division.
CHITTY, J.
April 30.
SUTTON *v.* SUTTON.

Real Estate—Mortgage—Real Property Limitation Act, 1874—Land outside the Jurisdiction.

Demurrer to plaintiff's amended reply.

By indenture dated May 13, 1868, and made between the defendant of the one part and the plaintiff's testator of the other part, real estate, some of which was situated in England and the rest in Jamaica, was mortgaged to the plaintiff's testator to secure 1,850*l.* and interest. The last payment in respect of the mortgage debt was in 1869, within the twenty years', but outside the twelve years', limitation. The plaintiff, in his amended reply, stated that the English portion of the mortgaged hereditaments had been sold before the passing of the Real Property Limitation Act, 1874, and pleaded that that Act could not apply to land in Jamaica.

To this amended reply the defendant demurred.

Romer, Q.C., and *J. G. Wood* for the demurrer.

Macnaghten, Q.C., Etherington, and *Chubb* for the plaintiff.

CHITTY, J., overruled the demurrer, and held that the words of section 8 of the Real Property Limitation Act, 1874, 'any sum of money secured by any mortgage,' meant 'any sum of money secured by any mortgage at the time of the passing of the Act,' and that the words 'any land' in the same section meant land within the jurisdiction.

Chancery Division.
CHITTY, J.
April 30. May 7.
In re VAUGHAN. HALFORD *v.* CLOSE.

Will—Accumulation—Thellusson Act—Policy of Assurance—Application of Dividends for Premium.

A testator, who died in 1839, by his will, dated in 1835, bequeathed to trustees 1,000*l.* 3 per cent. consolidated or reduced annuities, and directed them to apply the dividends in effecting a policy of assurance on the life of his son.

The estate was insufficient to meet the whole of the bequest, and the trustees appropriated 957*l.* 8*s.* 8*d.* reduced 3 per cents. for the purpose, and applied the income to the payment of the premiums. The question arose whether the application of the dividends to the payment of premiums was void as an accumulation under the Thellusson Act as from the expiration of twenty-one years from the testator's death.

Macnaghten, Q.C., Hornell, Tucker, and *T. H. Wright* for the different parties.

HELD, that it was not void, and that the case was governed by *Bassill* v. *Lister*, 20 Law J. Rep. Chanc. 641; 9 Hare 177, which was still binding, notwithstanding the comments made upon it in 1 Jarm. on Wills, ed. iv. p. 316-17.

Chancery Division.
PEARSON, J.
April 23, 30.
May 2.
In re ARCEDECKNE. ATKINS *v.* ARCEDECKNE.

Principal and Surety—Security effected by Creditor for his own Benefit—Right of Co-sureties to Benefit of Security assigned to Surety.

In an administration action a claim was made by a person who had been co-surety with the testator for the payment of a certain debt. The claimant had paid the whole debt, and sought to prove against the estate for the amount of the contribution payable by the testator. It appeared that the creditor had, for his own convenience, and without the concurrence of or privity of either the principal debtor or the sureties, effected certain policies on the life of the debtor, and these policies were assigned to the claimant by the creditor. The question was whether the claimant was bound to bring the policy funds into account as against his co-sureties.

Kekewich, Q.C., Graham Hastings, Q.C., E. Cutler, and *E. Ford* appeared.

PEARSON, J., following *Steel* v. *Dixon*, L. R. 17 Chanc. Div. 825, held that, in ascertaining the amount of the debt of the claimant, credit must be given for the sums received under the policies, the claimant, however, having credit for all premiums or other sums paid by him in respect of the policies.

Bankruptcy.
May 7.
Re SNEYD. *Ex parte* THE BISHOP OF OXFORD.

Composition—Statement of Affairs—Debt not correctly stated—Judgment—Mortgage—Mortgagor—Bankruptcy Act, 1869, *s.* 126.

Appeal from the Oxfordshire County Court.

By an indenture of May 15, 1878, the debtor, the Rev. G. A. Sneyd, mortgaged the advowson of Chastle-

ton, Oxfordshire, to Mrs. Nutting, to secure 2,200*l.* and interest at 5 per cent. The mortgage contained the usual covenant by Sneyd for payment of the 2,200*l.*, with interest at 5 per cent., on a certain day; and then continued, 'and, further, that if the said sum of 2,200*l.*, or any part thereof, shall remain unpaid' after the day fixed for payment, the said Sneyd 'will, so long as the same sum, or any part thereof, shall remain unpaid, pay to the said Nutting interest for the said sum of 2,200*l.*, or for so much thereof as shall, for the time being, remain unpaid, at the rate of 5 per cent. per annum.' The living of Chastleton shortly afterwards became vacant, and Mr. Sneyd presented himself. The interest was not paid; and, in July, 1882, a writ was issued for the recovery of the 2,200*l.* and interest at 5 per cent. to the date of the writ. On July 29 judgment was recovered for the amount claimed. In November following, the debtor filed his petition for liquidation; and, on January 6, 1883, resolutions were registered for the acceptance of a composition of 2*s.* in the pound. A writ of *fi. fa.* having been issued, the sheriff returned *nulla bona*; and, on February 4, 1883, a writ of sequestration, in respect of the debtor's living of Chastleton, was issued. On March 15 further proceedings under the writ of sequestration were restrained by the County Court judge on the application of the debtor.

The Bishop and Mrs. Nutting appealed.

In the debtor's statement of affairs, Mrs. Nutting had been scheduled as a creditor for 2,317*l.* 10*s.* 7*d.*; this sum had been arrived at on the assumption that 4 per cent. only was payable from the date of the judgment.

Winslow, Q.C., and *Macaskie*, for Mrs. Nutting, contended, on the authority of *Popple v. Sylvester*, 52 Law J. Rep. Chanc. 54; 22 L.R. Chanc. Div. 98, that 5 per cent. was still payable, notwithstanding the judgment; and that, the amount of the debt being inaccurately stated by the debtor in his statement of affairs, the composition was not binding on Mrs. Nutting.

Hon. B. Coleridge and *J. B. Allen* for the debtor.

The CHIEF JUDGE said that neither the composition nor the judgment would affect the appellant's right, as mortgagee, to 5 per cent. on any money that was owing to her on that security. No doubt, under the judgment, she was entitled to interest at 4 per cent., but she was also entitled, under her mortgage, to interest at 5 per cent. For this reason the appellant's debt had not been truly stated, and she was not bound by the composition.

Appeal allowed, with costs.

Queen's Bench Division. April 16. } *Re* MANSER.

Extradition—33 & 34 *Vict. c.* 52—*Committal by Magistrate—Sufficiency of Evidence.*

This was an application for a writ of *habeas corpus* in the case of a prisoner who had been committed, by Sir James Ingham, to Clerkenwell to await his extradition to Germany in respect of an alleged bankruptcy offence committed in that country.

B. Rowland, Q.C., appeared in support of the rule, and contended that there was no evidence that the person charged had committed an extradition crime; or that, at all events, the balance of evidence was in favour of the accused.

The COURT (FIELD, J., and MATHEW, J.) held that there was evidence to warrant the committal, and that the Court had no jurisdiction, upon the present application, to inquire whether or not the magistrate's decision was against the weight of evidence.

Application refused.

Queen's Bench Division. May 2. } GREEN *v.* DUCKETT.

Distress Damage feasant—Cattle impounded on Premises—Tender of Damages after the Impounding—Exorbitant Demand—Involuntary Payment—Money had and received.

Appeal from the County Court of Somersetshire holden at Wells.

The material facts stated in the special case were as follows: The plaintiff's bull strayed and entered the yard of the defendant, where it was alleged that it had upset a meal tub. The defendant in consequence distrained it damage feasant and impounded it in a shed in the yard. The plaintiff came to inquire, and was told by the defendant that it was there, but that it would not be given up except upon payment of 2*l.* for the damage done. The plaintiff, having endeavoured in vain to ascertain the damage, and believing that there was no damage, tendered to the defendant 1*s.* 6*d.* for damage and expenses, and demanded the bull. The defendant refused to give it up; and the plaintiff, to obtain possession of the bull, paid to the defendant, under protest, 2*l.* He then received the bull. This action was brought to recover the difference between 2*l.* and 1*s.* 6*d.* The learned County Court judge found, as facts, that the plaintiff made a legal tender of 1*s.* 6*d.*, that 1*s.* 6*d.* was amply sufficient to cover the real damage and expenses, that the plaintiff was compelled to pay the excess to obtain the bull, and that he paid it under protest. He held that the plaintiff could legally recover the excess thus obtained from him, and gave judgment for the plaintiff for 1*l.* 18*s.* 6*d.*

The question for the opinion of the Court was whether such judgment was correct.

Pitt-Lewis, for the defendant, cited a passage from Woodfall's 'Landlord and Tenant,' 9th edition, pp. 651, 652: 'The distrainer may take amends tendered after the impounding, if he chooses, and let the distress out; but he is not legally bound to do so, and may, therefore, safely practise some extortion, say to the extent of 10*l.* (or even more); which the party distrained on must either submit to, or incur the trouble and expense of a replevin. . . . He cannot pay under protest the amount claimed, and afterwards recover back the excess in an action for money had and received for his use. He also cited *Lindon* v. *Hooper*, 1 Cowp. 414; *Gulliver* v. *Cosens*, 1 C.B. 788; 14 Law J. Rep. C.P. 215; *Glynn* v. *Thomas*, 11 Ex. 870; 25 Law J. Rep. Exch. 125; *Thomas* v. *Harris*, 1 M. & G. 695; 9 Law J. Rep. C.P. 308; and *Skeate* v. *Beale*, 11 Ad. & Ell. 983.

B. Coleridge, contrà, cited *Ashmole* v. *Wainwright*, 2 Gale & Dav. 217.

The COURT (DENMAN, J., and HAWKINS, J.) held that, when the distress is impounded on the premises, a vendor within reasonable time after such impounding is not too late, following the dicta in *Browne* v. *Powell*, 4 Bing. 230; and that therefore the plaintiff was entitled to recover.

Appeal dismissed, with costs.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 4. } FENTON *v.* HARRISON AND OTHERS.

Railway Company—Mortgages—Debenture Stock—Priority—Companies Clauses Act, 1863, *Part* 3.

This was an appeal by a holder of debenture stock of the Cornwall Minerals Railway Company, against the decision of the Court of Appeal, reported 51 Law J. Rep. Chanc. 98.

Davey, Q.C., and *Webster*, Q.C. (*Medd* with them) for the appellant.

Kekewich, Q.C., *Rigby*, Q.C., and *Stirling* for Harrison.

Graham Hastings, Q.C., and *Prior* for the company.

Sir H. Giffard, *W. Pearson*, Q.C., and *Norton* for Sir T. Brassey, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, LORD WATSON, and LORD FITZGERALD) affirmed the decision of the Court below, with costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. LINDLEY, L.J. FRY, L.J. May 5. } *In re* PINK.

Practice—Lunatic—Insolvent Estate—Maintenance of Lunatic—Rights of Creditors.

In this case C. Pink was found lunatic by inquisition, and on March 15, 1883, the master certified as to the fortune, maintenance, and debts of the lunatic. By his certificate he found that the income of the lunati did not exceed 163*l.* per annum; that 2*l.* 2*s.* per week was a proper sum to allow for the maintenance of the lunatic; that the estimated value of the lunatic's estate did not exceed 6,800*l.*, while his debts exceeded 7,000*l.*, including a sum of 374*l.* due to the committee for the maintenance of the wife and children of the lunatic.

A summons was then taken out by the committee that the said sum of 374*l.* might be repaid to him out of the lunatic's estate; that a sum sufficient to raise 2*l.* 2*s.* a week for the maintenance of the lunatic might be set apart and invested for that purpose; and that the balance of the lunatic's estate might be distributed rateably amongst his creditors.

This summons was opposed by the creditors, who contended that, as the estate was insolvent, their rights as creditors ought to be first considered, especially as the lunatic could be well taken care of in a county asylum; and that the whole estate ought to be at once distributed amongst them. The summons was adjourned into Court.

S. Dickinson for the summons.

W. Barber, Q.C., and *Russell Roberts* for the largest opposing creditors.

Vaughan Hawkins for other creditors.

Their LORDSHIPS made an order in the terms of the summons, being of opinion that it had long been the settled practice of the Court to consider and provide in the first place for the past and future maintenance of the lunatic. It was the duty of the Court to protect the lunatic, and the suggestion that he should be dealt with as a pauper lunatic was wholly contrary to the practice, and would not be entertained for a moment.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
FRY, L.J.
April 17, 21, 23, 24, 27.
May 9.

MOSTYN *v.* LANCASTER.
TAYLOR *v.* LANCASTER.

Settlement—Power of leasing—Tenant for Life—Mining Leases—Peppercorn Rent—Charge on Inheritance—Lease referring to prior Lease—Incorporation of Covenants and Exceptions—Removal of Pillars—Consent—Mortgagor and Mortgagee—Injunction.

These were two appeals from the decision of BACON, V.C., fully reported 51 Law J. Rep. Chanc. 696.

Davey, Q.C., and *Sir A. T. Watson* for the appellants in the first action, who were also the defendants in the second action.

Marten, Q.C., *Finch*, and *J. Dixon* for the appellants in the second action, who were also the defendants in the first action.

Their LORDSHIPS dismissed both appeals, with costs.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
May 9.

Re MOORDAFF. BURGOINE *v.* MOORDAFF.

Practice—Issues of Fact—Trial by Jury—Disagreement of Jury—Trial directed by Judge before himself without a Jury—Jurisdiction—Order XXXVI., Rules 3, 26.

This was an action in the Probate Division, and raised the issue whether the testator was of sound mind when he made his will.

The plaintiff, on delivering his reply, gave notice for trial by jury, and the action was set down for trial, and tried, before a jury, who were discharged without being able to agree.

The action was set down a second time and tried before a jury, who, again, were discharged without agreeing.

The action was set down a third time for trial, when HANNEN, J., on a summons taken out by the defendants, directed that the action should be tried before him without a jury.

Against this order the plaintiff appealed.

Willis, Q.C., and *Bayford*, for the appellant, contended that, after an action had, under Rule 3 of Order XXXVI., been set down for trial, and had been acted upon, the rights of the parties had become fixed, and the Court had no jurisdiction to alter the mode of trial. The discretionary power conferred by Rule 26 could only be properly exercised before trial.

Sir H. Giffard, Q.C., *Inderwick, Q.C.*, and *Middleton* for the respondents.

Their LORDSHIPS dismissed the appeal, with costs. It was said that, after notice for trial by jury under Order XXXVI., Rule 3, had been given and acted upon, the Court had no jurisdiction to exercise the discretionary power conferred on it by Rule 26 of the same Order. But no good reason had been given for limiting the generality of the power conferred by that rule. Nothing in the order made it subject to the foregoing rule. On the contrary, Rule 3, under which the notice for trial had been given, was expressly made subject to the rules that followed it, one of which was Rule 26. The judge, therefore, had jurisdiction to interfere and vary the method of trial, and there was no ground for saying in this instance that his discretion had been improperly exercised.

Court of Appeal.
BAGGALLAY, L.J.
LINDLEY, L.J.
FRY, L.J.
May 11.

Ex parte HAUXWELL. *In re* HEMINGWAY.

Bill of Sale—Parol Agreement—Registration—Assignment by Debtor of whole Property to secure existing Debt—Act of Bankruptcy—Bills of Sale Act, 1878, *ss.* 4, 9—*Bankruptcy Act*, 1869, *s.* 6, *subs.* 2.

In May, 1882, Hemingway, who was a trader, obtained a loan from his bankers of 300*l.*, Hauxwell being his surety for the repayment thereof on the understanding that Hemingway should give him, by way of security, an assignment of his effects. A bill of sale was accordingly prepared, by which the grantor assigned to the grantee all his then existing personal property, and gave him power to seize all property afterwards acquired by him until the security was satisfied. This deed was not executed by Hemingway until August, 1882, and on November 6 he filed a liquidation petition, and the trustee claimed the property.

The CHIEF JUDGE held that the deed was void as against the trustee, on the ground that the parol agreement to give the bill of sale ought to have been registered.

Hauxwell appealed.

Cooper Willis, Q.C., and *Yate Lee* for the appellant.

Winslow, Q.C., and *R. Vaughan Williams*, for the trustee, argued, on the authority of *Graham* v. *Chapman*, 12 Q.B. 85; 21 Law J. Rep. C.P. 173, that the bill of sale was necessarily void, inasmuch as it comprised not only all the grantor's effects existing at the time of its execution, but also all the property to be hereafter acquired by him, including what he might purchase by means of the advance. And, further, that the execution of the bill of sale had been purposely postponed in order to save the grantor's credit; and that, therefore, it was void as an act of bankruptcy.

Their LORDSHIPS held that this deed could not be impeached under the Bills of Sale Act, 1878; and they were also of opinion that the proposition, in support of which *Graham* v. *Chapman* was cited, could not be maintained. If that case was so decided, it was wrong, and must be overruled. They were also of opinion upon the facts (BAGGALLAY, L.J., dissenting) that the execution of the deed had not been postponed in order to protect the credit of the grantor. They therefore upheld the validity of the bill of sale, and allowed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
May 2, 3, 8, 9.

TEEBAY *v.* THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Railway Company—Agreement with Secretary not under Seal—Reservation of Easement—Subsequent Conveyance under Seal—Abandonment—Companies Clauses Consolidation Act, 1847 (8 & 9 *Vict. c.* 16), *s.* 97.

The Cheshire Lines Committee were incorporated by Act of Parliament for the construction of a certain railway, which at one point ran nearly at right angles to a high road, and it was originally intended to carry the

road under the railway; but, in the course of construction, it was determined to carry the road over the railway, and accordingly it became necessary to acquire certain copyhold lands vested in R. Teebay, the predecessor in title of the plaintiffs, which lay in the angle formed by the north side of the railway and the east side of the road; and by an agreement made in 1870, signed by the secretary of the committee, R. Teebay agreed to sell the land for 1,430*l.*, and it was thereby provided that R. Teebay, his heirs or assigns, should have a right of access to other lands belonging to him by and over any of the slopes which the promoters might arrange in their works. This agreement was followed, in 1871, by a deed containing covenants for title and a deed-poll by R. Teebay conveying the land to the committee, and neither deed recited nor referred to the right of access mentioned in the agreement. The committee took possession and carried the road over the railway, the slope of the embankment of the road being separated from R. Teebay's land by a post and rail fence only. In 1881 the Widnes Local Board, under an agreement with the committee, widened the road and built supporting walls at the foot of the slope, thereby cutting off the access to the slope from the plaintiff's lands. The plaintiff brought this action against the committee and board for an injunction and damages. The defendants contended that the proviso in the agreement of 1870 was not binding, as it was not executed as required by section 97 of the Companies Clauses Act; and also that the agreement was merged in the subsequent conveyance, and the right to the easement, if any, was abandoned.

Hemming, Q.C., and *Badcock* for the plaintiff.

Marten and *Beale* for the committee.

H. Smith and *Medd* for the board.

BACON, V.C., held that, under the circumstances, the proviso in the agreement of 1870 was not enforceable; and dismissed the action, with costs.

Chancery Division. PEARSON, J. May 2. } BRANDRETH *v.* SHEARS.

Practice—Order XVII., Rule 2—Action for Recovery of Land—Joinder of Action.

The plaintiff in this case sued the defendants as the legal personal representatives of one Powell for the recovery of possession of a certain messuage. In the statement of claim as originally delivered, Powell was treated as being in occupation as a trespasser, and the plaintiff asked for recovery of possession, an account of rents or mesne profits, and payment thereof, a receiver, damages, and costs. The defendants, by their statement of defence, denied the plaintiff's claim, and pleaded the Statute of Limitations.

The statement of claim was then amended by the insertion of statements to show that Powell was in occupation under a tenancy created by a certain agreement.

This was a motion by the defendants to have all the proceedings in the action stayed, with costs, on the ground that other causes of action were joined with an action for the recovery of land without the leave of the Court having been obtained under Order XVII., Rule 2.

Rigby, Q.C., and *W. W. Cooper*, for the defendants, contended that a claim for damages against the defendants as trespassers could not be combined in the same action with a claim against them for mesne profits as tenants.

Hastings, Q.C., and *E. Beaumont*, for the plaintiffs, argued that the word 'damages' was mere surplusage, and must be treated as meaning 'mesne profits;' and they asked for leave to amend by striking out the word.

Rigby, Q.C., in reply.

PEARSON, J., granted the motion; being of opinion that the claim was stated in the alternative, and was, therefore, of such a nature as that, except under special circumstances, no leave would have been given to file it.

Chancery Division. PEARSON, J. May 4. } BALLARD *v.* TOMLINSON.

Practice—Order at Chambers—Entry—Enforcement—Consolidated Order XXXV., Rule 32.

An order made by the chief clerk in chambers cannot be enforced by writ of attachment until after entry.

De Castro for the plaintiff.

Vaughan Hawkins for the defendants.

Chancery Division. PEARSON, J. May 8. } CHARLES *v.* THE FINCHLEY LOCAL BOARD.

Local Board—Powers of—Pollution of Stream by Third Party—Action to restrain Board from permitting Continuance of same—Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 21.

Under an agreement between A. and a sanitary board, A. was entitled to discharge surface-water from his land into a ditch which ran past B.'s house. A. afterwards, without the leave or license of the board, or of the local board which succeeded it, and contrary to the plan which had been approved by the board when the agreement was entered into, began to discharge sewage into the ditch through the same pipe by which his surface-water was discharged. B. moved for an injunction to restrain the local board, as sole defendants, from allowing the sewage to pass into the ditch, and so causing a nuisance.

Cozens-Hardy, Q.C., and *Farwell* for the motion.

Cookson, Q.C., and *Fooks contrà.*

PEARSON, J., held that the local board had power, both at common law and also under section 21 of the Public Health Act, 1875, to physically stop the flow of sewage through the pipe, even though, in so doing, they might also stop the flow of surface-water, since A. was exercising his limited right in excess so as to produce a nuisance; and that it being, therefore, possible for the board to abate the nuisance without instituting legal proceedings, or devising a new system of drainage, or creating a greater nuisance than that which was to be abated, B. was entitled to compel the board to do so.

Chancery Division. PEARSON J. May 8. } JACKSON *v.* TYAS.

*Practice—Investment of Money in Court—Cash under Control of the Court—Money paid in under Private Act—*23 & 24 *Vict. c.* 38, *s.* 10—*General Order, February* 1, 1861.

Adjourned summons.

The Ward Jackson's Estate Act (a private Act passed in the year 1853) provided (section 59) that all moneys

paid into the bank under it should 'in the meantime,' until applied for the purposes by the Act authorised, be laid out in the purchase of Exchequer bills in the name of the Accountant-General. Under the provisions of the Act there was a sum of about 47,000*l.* in Court invested in Exchequer bills.

This was a summons by the defendants, the trustees of the will of Ward Jackson (in effect), raising the question whether these Exchequer bills were cash under the control of the Court within the meaning of 23 & 24 Vict. c. 38, s. 10, and the General Order of February 1, 1861.

A. Bailey for the summons.

E. Ward for the plaintiff.

PEARSON, J., thought that the construction put by the Court of Appeal on the words, 'cash under the control of the Court,' in the recent case of *Ex parte St. John Baptist College, Oxford*, 52 Law J. Rep. Chanc. 268; L. R. 22 Chanc. Div. 93, showed plainly that, whenever money was under the control and care of the Court, the intention was to give the enlarged power of investment. The summons would, therefore, go back to chambers, with a declaration that the Act of 23 & 24 Vict. c. 38, and the General Order under it, applied to the Exchequer bills in Court.

Queen's Bench Division. May 22. } COLLINS *v.* STINSON. (FRANCE, CLAIMANT.)

Following Money—Fraudulent Purchase by Bankrupt—Breach of Contract—Deposit Money—Forfeiture—Rights of Trustee in Bankruptcy.

This was a special case in which the question raised was whether the plaintiff, as trustee of the estate of J. C. Wilson, a bankrupt, was entitled to recover a sum of money paid as a deposit under the following limitations: It appeared that, in August, 1882, Wilson, having secretly realised his property and effects, absconded from Swindon with the proceeds of such realisation. He subsequently, prior to being adjudicated a bankrupt, assumed the name of Watson; and purporting to act for a third party, though, in fact, acting on his own behalf, he entered into an agreement with the claimant for the purchase of some house property, and paid to the defendant, an auctioneer, as stakeholder, under the said agreement, the sum of 95*l.*, as a deposit under the agreement; one of the terms of which was that, if the purchaser failed to comply with the conditions, the deposit would be forfeited to the vendor. It was admitted that the claimant and the defendant had acted *bonâ fide* throughout, and knew nothing about the bankruptcy or frauds of Wilson. The purchase of the property was never completed according to the conditions of the agreement; but such non-completion was not caused by any default on the part of the vendor, who now claimed to be entitled to the deposit money as against the trustee of the bankrupt.

Lamaison, for the plaintiff, contended that the trustee had the right to follow the moneys, which were capable of being ascertained. He cited *Taylor* v. *Plumer*, 3 B. & S. 562, and *Re Hallett's Trusts*, 49 Law J. Rep. Chanc. 415.

Temple Cooke, for the claimant, contended that the deposit money had, under the circumstances, become the absolute property of the vendor, and could not be followed by the bankrupt's trustee.

The COURT (POLLOCK, B., and LOPES, J.) held that it was of the essence of the contract that the deposit money should be forfeited in the event of the contract not being completed, and that money so burdened could not be followed up by the trustee.

Judgment for the claimant.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 8, 9. } HUGHES *v.* PERCIVAL.

Dangerous Building Operations—Damage caused to adjoining House—Liability of Principal for negligent Acts of Contractor's Servants—Termination of Risk.

The defendant appealed from the judgment of the Court of Appeal, reported 51 Law J. Rep. Q.B. 388.

Philbrick, Q.C., and *D. Kingsford* for the appellant.

Webster, Q.C., and *M'Call* for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, and LORD FITZGERALD) dismissed the appeal, with costs.

House of Lords. June 3. } YOUNG & Co. *v.* THE MAYOR, &c., OF ROYAL LEAMINGTON SPA.

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 174—*Urban Sanitary Authority—Municipal Corporation—Contract not under Seal—Executed Contract.*

The plaintiffs appealed from the decision of the Court of Appeal, reported 51 Law J. Rep. Q.B. 292.

Davey, Q.C., and *Edwyn Jones* for the appellants.

Sir F. Herschell (*Solicitor-General*), *Mellor, Q.C.*, and *Dugdale, Q.C.*, for the respondents, were not called upon.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, LORD BRAMWELL, and LORD FITZGERALD) affirmed the decision of the Court below, with costs.

House of Lords. April 17, 19, 20, 23. June 4. } MADDISON *v.* ALDERSON.

Contract—Verbal Agreement to devise Land—Part Performance—Statute of Frauds.

This was an appeal from a judgment of the Court of Appeal, which reversed one of STEPHEN, J. The case is reported 49 Law J. Rep. Exch. 801; 50 *ibid.* Q.B. 466.

Rigby and *W. D. Rawlins* for the appellants.

Davey, Q.C., and *Gainsford Bruce* (*W. Barber, Q.C.*, with them) for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD O'HAGAN, LORD BLACKBURN, and LORD FITZGERALD) dismissed the appeal, without costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. COTTON, L.J. BOWEN, L.J. May 24. } *Ex parte* HALL. *In re* WOOD.

Bankruptcy—Receiver—Injunction—Undertaking as to Damages—Application to enforce—Delay.

In this case a bankruptcy petition had been presented, and a receiver had obtained, *ex parte*, an injunction to restrain the holder of a bill of sale, which had been executed

by the debtor, from proceeding with the advertised sale of the goods comprised in it. Upon this occasion the receiver had given the usual undertaking as to damages.

The Court had afterwards declared the bill of sale valid; and now, after a delay of nearly four years, the bill of sale holder applied to the Court to enforce against the receiver his undertaking as to damages.

Cooper Willis, Q.C., for the appellant.

Winslow, Q.C., and *W. H. Clay* for the receiver.

Their LORDSHIPS held that the delay which had taken place was a sufficient answer to the application.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
May 25, 28.

CASSABOGLOU *v.* GIBB, LIVINGSTON, & Co.

Principal and Agent—Goods forwarded not in Accordance with Commission and Description—Measure of Damages.

Appeal from the Queen's Bench Division. The case is reported 51 Law J. Rep. Q.B. 593.

The defendants, commission agents in China, were instructed by the plaintiff, a merchant in London, to buy a particular kind of opium. The defendants telegraphed that they had done so, and drew bills on the plaintiff for the price of the opium and for the amount of their commission. They could not procure that kind of opium in the market, and they bought and shipped thirty cases of an inferior kind of opium. Before the arrival of the ship the plaintiff had resold ten cases of the opium, in consequence of which he had to make compensation to his vendees. On the arrival of the ship he rejected the cargo, and sold the opium in the market, where it fetched considerably less than the market price of the particular kind of opium ordered by him, and he claimed to recover from the defendants the amount of the difference. The defendants paid into Court a sum sufficient to recoup the plaintiff for all the loss which he had actually suffered.

The Queen's Bench Division gave judgment for the defendants.

The plaintiff appealed.

Pollard for the appellant.

Cohen, Q.C., and *Anstie, Q.C.*, for the defendants.

Their LORDSHIPS dismissed the appeal; holding that the plaintiff was only entitled to recover the actual damage suffered, and not any loss of possible profit, as the relation between him and the defendants was one of principal and agent, and not of vendor and purchaser.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
May 28.

COOPER AND ANOTHER *v.* PRICHARD.

Partnership—Fraud by one Partner in Business of Firm—Liability of another Partner who has received an Order of Discharge in his Bankruptcy—32 & 33 Vict. c. 61, s. 49.

Appeal by the defendant from the judgment of POLLOCK, B., at the trial without a jury.

The appeal raised the question whether the defendant Prichard, who was one of the partners in a firm of solicitors, was liable for the consequences of a fraud committed by one of his partners in not investing money entrusted to the firm for investment.

The defendant Prichard had become a bankrupt and had received his order of discharge, and he claimed to be protected from this liability by the discharge.

Pollock, B., gave judgment for the plaintiffs.

The defendant appealed.

Davey, Q.C., Grantham, Q.C., and *W. G. Lawrence* for the appellant.

Wills, Q.C., and *D. Gardner*, for the plaintiffs, were not called on.

Their LORDSHIPS dismissed the appeal; holding that section 49 of the Bankruptcy Act, 1869, prevented the defendant from setting up his discharge in bankruptcy in answer to a debt incurred by means of fraud.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
May 29.

HUTTON *v.* WEST CORK RAILWAY COMPANY.

Directors—Company's Powers of Remuneration for past Services—Compensation of Officers—Companies Clauses Act, 1845, s. 91.

Application by the plaintiff from a decision of FRY, J. The case is reported 52 Law J. Rep. Chanc. 377.

Cookson, Q.C., and *Seward Brice* for the appellant.

Cozens-Hardy, Q.C., and *Phipson Beale* for the company.

HELD, per COTTON, L.J., and BOWEN, L.J. (*dissentiente* BAGGALLAY, L.J.), that it was not competent for a company which only continued for the purposes of the winding-up to vote compensation to servants or remuneration to its directors for past services. So long as a company was a going concern, it had power in general meeting to grant gratuities to servants and remuneration to directors for past services, for the reason that such a course of conduct was conducive to the efficient working of the company in the future.

BAGGALLAY, L.J., considered the resolution valid; thinking that the power of the company still remained for the regulation of its internal affairs. The winding-up of the company, and the distribution of its assets, was a regulation of the internal affairs of the company.

Appeal allowed. Injunction made perpetual, without prejudice to a general meeting voting remuneration to the directors for their services in the winding-up.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
May 29.

GILBEY *v.* JEFFRIES.

Bankruptcy — Annulling Adjudication — Discharge of Bankrupt—32 & 33 Vict. c. 71, s. 28.

Appeal from judgment of FIELD, J., overruling demurrer to statement of defence.

The case is reported 52 Law J. Rep. Q.B. 116.

The defendant to an action for goods sold, money lent, &c., pleaded as a defence that he, the defendant, was adjudicated bankrupt, and that subsequently it was resolved by a statutory majority of creditors, under section 28 of the Bankruptcy Act, 1869, that, upon the defendant assigning to the trustee under the bankruptcy all his

estate and effects for the benefit of his creditors, the order of adjudication in bankruptcy should be annulled; that the defendant executed a deed of assignment, the resolution was approved by the Court, and the bankruptcy was annulled.

Field, J., upon demurrer, held that the provision that the bankruptcy should be annulled released the defendant, and was a good answer to an action subsequently brought against the defendant by one of the creditors for his debt.

The plaintiff appealed.

W. Graham for the plaintiff.

J. L. Walton for the defendant.

Their LORDSHIPS dismissed the appeal.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
May 31.

Ex parte HILL. *In re* BIRD.

Bankruptcy—Fraudulent Preference—Statutory Definition of—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 92.

On October 12, 1882, Bird executed a bill of sale in favour of Hill, comprising substantially the whole of his property, the deed on the face of it purporting to be made to secure a present advance of 270*l.* by Hill to Bird. Bird had previously executed a bill of sale of the same property to one Feldman, a money lender, to secure an advance of 140*l.* Hill was a member of a firm who had supplied Bird with goods upon credit, to whom Bird owed 125*l.* An arrangement was made by which Hill was to advance 270*l.*—140*l.* to be paid to Feldman, 125*l.* to Hill's firm, and 5*l.* for costs—and Feldman's bill of sale was to be transferred to Hill. In pursuance of this arrangement, the new bill of sale was given to Hill. On October 20 Bird filed a liquidation petition; and, on Hill threatening to sell the goods comprised in his bill of sale, the trustee paid him 270*l.* under protest, and applied to the County Court to set aside the bill of sale as against him.

The County Court judge declared the bill of sale void, both as an act of bankruptcy and as a fraudulent preference, and ordered Hill to repay the 270*l.* to the trustee. This decision was affirmed by the CHIEF JUDGE; and Hill now appealed.

R. Vaughan Williams for the appellant.

Winslow, Q.C., and *Finlay Knight* for the trustee.

Their LORDSHIPS upheld the decisions of the Courts below, considering that the transaction was a sham and a farce. They repeated the opinion expressed in *Ex parte Griffith, in re Wilcoxon* (noted *ante*, p. 22), that, in determining whether a transaction amounts to a fraudulent preference, the Court ought now to have regard simply to the statutory definition of fraudulent preference contained in section 92 of the Bankruptcy Act, 1869. In the present case they were of opinion that the deed in question was not only executed 'with a view' of giving the creditor a preference, but 'with the sole view' of so doing. They accordingly ordered the appellant to repay the 130*l.* to the trustee; but, as there were not sufficient materials before the Court to enable it to determine whether the trustee was also entitled to the 140*l.* as to which Hill was transferee of Feldman's security, they directed that the order should be without prejudice to any application by the trustee for the repayment of the 140*l.*

HIGH COURT OF JUSTICE.

Crown Case Reserved.
June 2.

REGINA *v.* LOWE.

Coram LORD COLERIDGE, L.C.J., POLLOCK, B., MANISTY, J., LOPES, J., and STEPHEN, J.

Evidence—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 10—*Page of the 'London Gazette.'*

Case reserved by the Chairman of the Derbyshire Quarter Sessions.

The prisoner was indicted under section 11 of the Fraudulent Debtors Act, 1869. A petition in bankruptcy was presented against the prisoner in the County Court, and an order made that the publication of a notice of the petition in the *London Gazette* should be deemed service of the petition on the prisoner.

At the trial there was produced the file of bankruptcy proceedings under the seal of the County Court; and on such file was an entire page of a printed document, headed '*London Gazette*,' in which an advertisement occurred addressed to the prisoner, giving him notice of the petition, &c.

At such trial it was contended, on behalf of the prisoner, that the page alleged to be part of the *London Gazette* did not contain the imprint of any printer or purport to be published by authority, and, therefore, should not be admitted in evidence.

The Court of Quarter Sessions admitted it in evidence, and reserved the question of their right to do so.

No counsel appeared.

HELD that such evidence was not admissible.

Conviction quashed.

Chancery Division.
BACON, V.C.
May 25.

In re GODFREY. GODFREY *v.* FAULKNER.

Trustees—Investment on Mortgage—Valuation—Two-thirds of Value—Liability.

This was an action against the surviving trustee of the will of T. C. Godfrey, who died in 1858, and the executors of a deceased trustee, to make them liable for an alleged improper investment of the trust funds on mortgage.

On August 17, 1869, a farmer, Middleditch, purchased a farm of about 150 acres, at Broad Blunsdon, Wiltshire, from the trustees of Christ's Hospital, for 6,895*l.* 1*s.* 9*d.*, the farm having been valued at this sum on behalf of the vendors, in September, 1868; and on May 24, 1870, the trustees advanced 2,400*l.* trust funds, as part of 5,000*l.* (the other 2,600*l.* being advanced by Charlotte Godfrey), on a contributory mortgage of the farm, at 4*l.* per cent. This mode of investment was authorised by the will. In 1877 the farm went out of cultivation, and was now unlet; and the interest on the mortgage was now in arrear. The farm in 1868 was let at a rental of 155*l.* 5*s.* 5*d.* The trustees had no independent valuation made on the occasion of the advance.

Horton Smith, Q.C., and *Blakesley*, for the plaintiff, contended that it was improper for the trustees to rely on the vendor's valuation; and that, even on that valuation, the advance amounted to more than two-thirds of the value of the property, which would have been 4,596*l.* 14*s.* 6*d.* only.

Hemming, Q.C., and *Rawlinson* for the executors of the deceased trustee.

Millar, Q.C., and *Vernon Smith* for the surviving trustee.

Horton Smith, Q.C., in reply.

BACON, V.C., said that the rule of the Court as to not advancing more than two-thirds of the value of agricultural land was not to be applied so exactly as was contended; that these trustees had acted with reasonable prudence, and the Court would not visit them with the results of the agricultural depression; and dismissed the action, without costs.

Chancery Division. BACON, V.C. June 1. } FRASER *v.* COOPER HALL & Co.

Practice—Counter-claim—Person named as Defendant, but not served—Appearance gratis—Rules of Court, 1875, *Order XXII., Rules* 6, 7.

The defendant in this action set up a counter-claim with his defence, making E. C. Bowen, who was not a party to the action, a defendant as well as the plaintiffs. The defence and counter-claim had not been served on E. C. Bowen; but his solicitors, having ascertained that he was named as a defendant to the counter-claim on March 23, 1883, entered an appearance. The defendant now moved that the appearance might be discharged.

J. Beaumont for the motion.

Hemming, Q.C., and *Maidlow*, for E. C. Bowen, contended that, according to the old practice, a defendant, though not served, had a right to appear gratis; that the old practice was still in force, and applied equally to a person named as defendant to a counter-claim.

BACON, V.C., said that the practice relating to counter-claims was entirely governed by the new procedure, and that, by Order XXII., Rules 6 and 7, a person, not a party to the action, was not a defendant till he had been served. The old practice, therefore, had no application, and the appearance must be discharged without costs, the defendant amending his counter-claim by striking out Bowen's name and all reference to him.

Chancery Division. KAY, J. June 2. } *In re* WALKER'S ESTATE.

Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *s.* 38—*Appointment of Trustees for Purposes of Act—Solicitor of Tenant for Life not to be appointed.*

This was an application by a tenant for life under a will that the existing trustees of the will (who were the devisees of trust estates of the last survivor of certain trustees who had been appointed by the Court) should be appointed trustees for the purposes of the Settled Land Act, 1882. The facts of the case are reported, *sub nom. Wheelwright* v. *Walker*, 52 Law J. Rep. Chanc. 274. One of the existing trustees was the solicitor of the tenant for life, and the respondent (who had purchased the interest of the remainderman prior to the passing of the Act) objected to his appointment.

Byrne for the applicant.

Rawlins for the respondent.

KAY, J., held that the solicitor of the tenant for life was not a fit person to be appointed trustee for the purposes of the Act, and referred the matter to chambers for the appointment of some other person in lieu of him.

Chancery Division. PEARSON, J. May 24. } *In re* PATTEN AND THE EDMONTON GUARDIANS.

Vendor and Purchaser—Unauthorised Investment in Land—Sale of purchased Land by Trustees—Consent of 'cestuis que Trust.'

Where trustees under an instrument, which contains no power of investment in land, or of selling land subject to the settlement, have purchased with the trust funds land which has subsequently increased in value, and have contracted to sell such land, it is sufficient to enable a good title to be made to such land for any one of the *cestuis que trust* under the instrument to join in the conveyance, and give his consent to the sale, since he would have been entitled to have the land sold in an action brought by him against the trustees.

Vernon R. Smith and *Bleby* for the parties.

Chancery Division. PEARSON, J. May 24. } *In re* THE RIVER SWALE BRICK AND TILE WORKS (LIM.)

Landlord and Tenant—Right of Distress—Common Law Distress—Distress under Deed—Current Rights—Marshalling Goods seized.

The common law right of distress, exercisable immediately on default being made in payment of rent, is not destroyed by the insertion in a lease of an express right of distress, extending to articles which would not be affected by the common law right, but exercisable only after the lapse of a certain time from default, if the lease contains no negative words; and notwithstanding the existence of such an express limited right, the common law right may be exercised immediately on default, but only as to goods to which that right extends.

If, in such a case, the lessor distrains for two half-years' rent at once, before the expiration of the period after the second half-year's rent becoming in arrear, which is fixed by the lease for the exercise of the power therein contained, and some of the goods seized under the entire distress are not seizable at common law, but only under the express power in the lease, the goods seized will be marshalled so as to set against the second half-year's rent, in the first instance, such of them as are seizable at common law, leaving the remainder of the seized goods to answer the first half-year's rent under the provision in the lease.

Everitt, Q.C., and *Beddall* for the summons.

M'Clymont, contrà.

Chancery Division. NORTH, J. June 1, 2, 4. } THE THREE TOWNS BANKING COMPANY *v.* MADDEVAR.

Fraudulent Conveyance—13 *Eliz. c.* 5—*Delay.*

This was an action by a creditor to set aside a conveyance to the defendant by his father of a small farm, on the ground that it was fraudulent and void against creditors under the Act 13 Eliz. c. 5. Ten years had elapsed between the execution of the conveyance and the institution of the action with knowledge of the plaintiffs.

Napier Higgins, Q.C., and *Eyre* for the plaintiffs.

Warmington, Q.C., and *Moreshead* for the defendant.

NORTH, J., held that the plaintiffs were not barred by delay; and gave judgment in their favour.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 10. June 11. } THE GREAT EASTERN RAILWAY COMPANY *v.* THE HACKNEY DISTRICT BOARD OF WORKS.

Metropolitan Management Acts (18 & 19 *Vict. c.* 120, *s.* 105; 25 & 26 *Vict. c.* 102, *s.* 107)—*Expenses of paving new Street—Liability of Company as Owners of Land abutting on a Street.*

The company appealed from the decision reported 51 Law J. Rep. M.C. 57.

Charles, Q.C., and *French* for the appellants.

Sir H. Giffard (*Poland* and *Avory* with him) for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, and LORD FITZGERALD) reversed the decision of the Court of Appeal; and restored that of the Queen's Bench Division, with costs.

House of Lords. June 17. } DUNFORD *v.* M'ANULTY.

Practice—Pleading—Effect of Defendant in Ejectment pleading that he is in Possession—Rules of Court, Order XIX., Rules 15, 17.

The plaintiff appealed from the judgment of the Court of Appeal, reported 50 Law J. Rep. Q.B. 294.

Charles, Q.C., and *A. Gwynne James* (*Graham* with them), for the appellant.

Mellor, Q.C. (*Dugdale, Q.C.*, with him), for the respondent.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD O'HAGAN, LORD BLACKBURN, and LORD FITZGERALD) affirmed the decision of the Court below, with costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. LINDLEY, L.J. FRY, L.J. May 2, 7, 8. June 5. } KALTENBACH *v.* LEWIS.

Factors Acts (4 *Geo. IV. c.* 83; 5 & 6 *Vict. c.* 39), *ss.* 1-3 *—Foreign Principal—Goods consigned to Agent in England for Sale—Set-off—Lien.*

This was an action brought by foreign principals against brokers in this country, claiming from them the proceeds of goods sold by them as brokers for one Meyer, a London merchant and commission agent. The plaintiffs had consigned foreign produce to Meyer for sale on their account, and he had employed the defendants to sell the goods so consigned. The defendants were also engaged in other transactions with Meyer, in the course of which they made large advances to him. Meyer died on May 5, 1880, insolvent, largely indebted both to the plaintiffs and the defendants. At his death the defendants had in their possession various goods, which had been consigned by the plaintiffs to Meyer, and placed in the defendants' hands for sale. Of these goods some had been agreed to be sold before Meyer's death, and the others had since been sold.

The defendants claimed a right to retain, as against the plaintiffs, the moneys arising from the sales by them as brokers for Meyer, in satisfaction for their lien on actual advances made *bonâ fide*, and not in respect of any antecedent debt, and, as such, protected by the Factors Acts. They also claimed, independently of those Acts, to be entitled to a lien, or set-off, for the whole amount due to them from Meyer, on the ground that the plaintiffs, being undisclosed foreign principals, had no greater rights against the defendants than Meyer

would have had; and that, if this right did not extend to the goods unsold, it did to the proceeds of the goods sold before the commencement of the action.

BACON, V.C., dismissed the action, with costs, being of opinion that the advances were all protected by the Factors Acts.

The plaintiffs appealed.

Webster, Q.C., Everitt, Q.C., and *F. M. Abraham* for the appellants.

Davey, Q.C., Horton Smith, Q.C., Northmore Lawrence, and *Butcher* for the respondents.

Their LORDSHIPS held that cash advances of 3,000*l.* and 800*l.*, made by the defendants against the goods of two particular ships, which had been sold before the death of Meyer, were protected by section 1 of the Factors Act, and not invalidated by section 3 of that Act on the ground that they were made in respect of an antecedent debt. The fact that such advances were made to Meyer to enable him to pay a debt for which they would have been liable had he failed to pay, did not make that advance an advance from them to him in respect of a debt owing by him to them; and such advances, having been made *bonâ fide*, in the ordinary course of business, without notice that Meyer was exceeding his authority in pledging the goods. They held that the plaintiffs had no claim against the defendants in respect of the moneys representing the goods sold before Meyer's death; but that the plaintiffs were entitled to the proceeds of the goods sold after his death, after deducting certain sums advanced by the defendants against the particular goods. They also laid down the following propositions:—First, a person receiving goods from an agent can acquire from the agent (1) all such title as the agent had in the goods by reason of lien for advances or otherwise; (2) all such title as the agent had authority to create; and (3) all such title as the agent had authority to create by the law or custom of the country where the agency is to be governed; but, as a general rule, the person taking such goods can get no better title than one or other of these. Secondly: Although an agent, authorised to receive money for a disclosed principal, can only validly receive it in cash, and disengaged from any other relations between payer and payee, an agent for sale authorised to employ, in his own name, a broker or other sub-agent in effecting the sale, may be satisfied by set-off, or in any other manner in which a debt may be discharged as between the agent and sub-agent. Thirdly: That the authority given by Meyer to the defendants to sell the goods, was withdrawn by his death and the commencement of this action; and consequently that, in respect of the moneys arising from the sales subsequent to these events, the defendants had no right of set-off.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
June 7.
} WEBB *v.* STENTON.

Attachment of Debt—Garnishee Order—Debt owing and accruing—Attachable Interest under Will.

Appeal from the Queen's Bench Division on special case.

In October, 1878, the plaintiff recovered judgment against one Hatton. In August, 1882, Hatton became entitled under a will to a share of the income arising from the trust fund under the will amounting to about 85*l.* a year, payable half-yearly in February and August. In October Hatton mortgaged his interest under the will to one Allen. One payment of 60*l.* had been made to Hatton on account of his share of income due to him under the will. In November, 1882, the plaintiff sought to attach Hatton's interest under the will under Order XLV., Rule 2; and the question was whether, at the date when the order was asked for, that interest could be attached.

The Queen's Bench Division (CAVE, J., and DAY, J.) refused to make the order.

Lumley Smith, Q.C., and *E. T. Castle* for the judgment creditor.

Charles, Q.C., and *Vernon Smith* for the defendants, the trustees of the will.

Their LORDSHIPS dismissed the appeal; holding that Hatton's interest under the will was not a debt owing or accruing from the defendants at the time when the order was asked for, within the meaning of Order XLV., Rule 2, and could not, therefore, be attached.

HIGH COURT OF JUSTICE.

Crown Case Reserved.
June 2.
} REGINA *v.* JONES.

Coram LORD COLERIDGE, L.C.J., POLLOCK, B., MANISTY, J., LOPES, J., and STEPHEN, J.

Bigamy—Absence during Seven Years—24 & 25 Vict. c. 100, s. 57.

Case reserved by STEPHEN, J.

The prisoner was convicted of bigamy, it being proved that he married one W. in 1865, and that in 1882 he went through the ceremony of marriage with another woman. It was also proved that after 1865 he and his wife W. were living together; but there was no evidence as to their having ever separated, or as to when, if separated, they last saw each other.

The question for the opinion of the Court was, whether, under the authority of the case of *Regina* v. *Curgerwen*, 35 Law J. Rep. M.C. 58, the prosecution were bound to prove that the prisoner knew that his wife was alive within seven years of the second marriage.

No counsel appeared.

HELD, that as there was no proof that the prisoner and his wife had ever separated, *Regina* v. *Curgerwen* did not apply; and that the conviction was correct.

Conviction affirmed.

Chancery Division.
BACON, V.C.
May 29.
} PINNOCK *v.* BAILEY.

Mortgage—Priorities—Fund in Court—Notice to Trustees—Stop Order.

In 1863 and 1864 a fund in Court representing the proceeds of sale of certain land subject to the trusts of a settlement was mortgaged to Bailey. In 1867 the same fund was mortgaged to Dobson. Dobson gave notice of his charge to the trustees of the settlement in June, 1875, but obtained no stop order. Bailey gave no notice to the trustees, but obtained a stop order in 1877.

This was an adjourned summons, raising the question of priority between Bailey and Dobson.

Warmington, Q.C., for Bailey.

E. Ford for Dobson.

Sturges and *G. E. S. Fryer* for other parties.

BACON, V.C., said that the office of the trustees was suspended; and that the notice given to the trustees by Dobson, the second mortgagee, was of no avail against Bailey's subsequent stop order. Bailey, therefore, was entitled to priority.

Chancery Division. BACON, V.C. May 30. } *Re* R. C. JONES'S SETTLED ESTATES.

Settled Estate—Tenant for Life—Limited Owner—Settled Land Act, 1882, *ss.* 44, 58 (1) (ix.).

A testator devised his freehold estates to trustees for 2,000 years from the day of his death, and subject thereto to the use of his said trustees during the life of A. G. upon the trust thereinafter declared, with divers remainders over. The testator declared that his freehold estates were devised to his said trustees as aforesaid upon trust to enter into possession and receipt of the rents and profits, and during A. G.'s life to continue in such possession and manage the premises and generally to deal with the same as if they were the absolute beneficial owners thereof; and, after paying expenses and keeping down the interest on mortgage debts, &c., and providing for an annuity of 400*l.* to A. G.'s son, the testator directed them to pay the balance or ultimate residue of such rents and profits to the said A. G. and his assigns during his life. The trusts of the term were for raising two sums of 30,000*l.* and 15,000*l.* At the testator's death the estates were subject to mortgages amounting to nearly 80,000*l.*, and there was consequently, at the present time, no income payable to A. G.

The trustee had a power of sale, but did not consider it advisable, in the interests of the persons entitled in remainder, to exercise it. A. G., however, was anxious to have some portion at least sold to pay off the incumbrances, and took out a summons under the Settled Land Act, 1882, section 44, for the opinion of the judge, asking (1) whether he was, under the will, a person entitled to the income of the land thereby settled under a trust or direction for payment thereof to him during his own life, subject to expenses of management, within the meaning of section 58, clause 1, subs. 9; and (2) whether as such person or otherwise he had the powers of a tenant for life under the said Act.

Marten, Q.C., and *Northmore Lawrence* for the summons.

Oliver Saunders, for the trustees, argued that inasmuch as A. G. was not at present actually entitled to any income, he was not within the definition of a limited owner under section 58 (1) (ix.), and, therefore, could not exercise the powers conferred on a tenant for life.

BACON, V.C., held that A. G. was exactly within the definition given by section 58 (1) (ix.), and that the fact that he was not at present in the actual receipt of income made no difference, and did not prevent him from exercising all the powers given by the Act to tenants for life and limited owners.

Chancery Division. BACON, V.C. May 31. } BROWN *v.* BURDETT.

Will—'Testamentary Expenses'—Costs of establishing Will in Probate Division.

This was an adjourned summons raising the question whether a charge on real estate of 'testamentary expenses' under a will, included the costs of litigation in the Probate Division in which the will was established.

E. K. Karslake, Q.C., Millar, Q.C., Chadwick Healey, Brett, Swinfen Eady, and *Norton* for the parties.

BACON, V.C., held that the words 'testamentary expenses' included the costs of establishing the will in the Probate Division.

Chancery Division. BACON, V.C. May 31. June 1, 5, 6. } *In re* THE GREAT WHEAL POLGORTH MINING COMPANY (LIMITED).

Company—Winding-up—Misfeasance of Officer of Company—Solicitor—Jurisdiction—Companies Act, 1862 (25 & 26 *Vict. c.* 89), *s.* 16.

This was a summons taken out by the liquidator in the winding-up, under section 165, to have it declared that the solicitor of the company was a promoter of the company, and liable for various alleged acts of misfeasance, and that he might be ordered to repay certain sums of money belonging to the company which he had received, and be disallowed his bills of costs against the company, on the ground of the alleged misfeasance and negligence, which had rendered his services useless to the company.

Marten, Q.C., and *Grosvenor Woods* for the summons.

Millar, Q.C., and *J. Cutler*, for the solicitor, contended that the solicitor was not an officer of the company, and not amenable to the jurisdiction of section 165.

Marten replied.

BACON, V.C., held that the solicitor of the company was not an 'officer' within the meaning of section 165; also that there was no evidence that the solicitor had ever acted as promoter or in any other capacity than that of solicitor; and that as solicitor he had not been guilty of any misconduct or negligence which would disentitle him to claim for his costs. His lordship, accordingly, directed the liquidator to pay the costs of the summons; and referred the solicitor's bills to the taxing officer, the solicitor to give credit for the sums he had received.

Chancery Division. KAY, J. June 1. } *In re* GHOST'S TRUSTS.

Will—Construction—Pecuniary Legacies—Insufficient Estate—Abatement—Release of Executors by pecuniary Legatees—Subsequent falling in of additional Funds—Right of pecuniary Legatees to have Balance of Legacies made up.

A testatrix bequeathed to trustees and executors 4,000*l.* upon trust for investment, and to pay the income to her married niece for life for her separate use, and afterwards in trust for her children; and, in case her niece should die leaving no children, the testatrix directed that the trust funds should form part of her residuary estate. After giving other pecuniary legacies, she made a bequest of her residue. The estate proved insufficient to pay the legacies in full; and the pecuniary legatees executed a deed, by which they acknowledged the receipt of dividends upon their legacies in discharge of the amounts of such legacies, and gave the executors a general release from all claims by them against the executors or the estate of the testatrix. The niece having died without leaving issue, the 4,000*l.* fell into the estate, which thus became sufficient to pay all the legacies in full.

The trustees having paid the 4,000*l.* into Court, the residuary legatees now presented a petition, asking that the fund might be paid out to them.

Rigby, Q.C., and *Townshend* for the petitioners.

Hastings, Q.C., and *Dauney* for the respondents.

Coltman for the trustees.

KAY, J., held that the pecuniary legatees were entitled to have the balances of their legacies made up in full out of the 4,000*l.*, with interest at 4 per cent., to be calculated from one year after the death of the testatrix. He was of opinion that the release executed by the pecuniary legatees did not operate as an estoppel against them, as it could not have been intended to enure for the benefit of the residuary legatees who were not even parties to it.

Chancery Division. KAY, J. June 6. } *Re* WELLS.

Settled Land—Infant Tenants for Life—Powers of leasing—Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *ss.* 2 (*subs.* 3, 5, *and* 10) *and* 59.

This was an application, under section 59 of the Settled Land Act, 1882, asking for the appointment of trustees of property belonging to infants. The infants in question were absolutely entitled, as next of kin to their father, who had died intestate, to shares or interests in freehold and copyhold lands, forming part of the partnership estate of a firm in which the father had been a partner. The application was made by the mother of the infants, as their next friend, and asked for the appointment of herself and a brother of the infants as trustees under the settlement, deemed to be existing under the Act, of the shares of the infants during their minorities; and that the powers of leasing exercisable by a tenant for life, under the Act, might be exercised by the trustees in the manner authorised by the Act.

The question was whether the shares of the infants in the partnership estate of their late father—forming, as they did, part of his personal estate—could be treated as settled land at all.

Dixon, for the applicants, referred to *In re Durrant and Stoner*, L. R. 18 Chanc. Div. 106, which was a case under the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74), where the words 'interest in land' were interpreted to mean the proceeds of land the subject of settlement.

KAY, J., made the order as asked; without prejudice, however, to any question as to the interests of the infants.

Chancery Division. CHITTY, J. June 9. } *Re* MACKENZIE'S TRUSTS.

Settlement—Money to be laid out in Land—Investment in Railway Debenture Stock—Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *s.* 2, *subs.* 1, *ss.* 21 *and* 22, *subs.* 2 *and* 4, *ss.* 33, 44, 51, *and* 56, *subs.* 2.

Money bequeathed to trustees upon trust for the purchase of land, to be settled in strict settlement, with a direction, until a proper purchase was found, for investment in Government or real securities, but not in any other mode of investment, may, under section 21 of the Settled Land Act, 1882, be invested in railway debenture stock.

Macnaghten, Q.C., and *Davenport* for the parties.

Chancery Division. PEARSON, J. May 23. } *In re* THE DUKE OF NEWCASTLE'S SETTLED ESTATES.

Settled Land Act, 1882, *ss.* 3, 6, 33, 56, 58, 60—*Powers of Leasing and Sale during Minority of Tenant for Life—In whom vested—Consents necessary—Tenant for Life—Trustees—Guardians.*

Adjourned summons under the Settled Land Act, 1882, s. 56, subs. 3.

By a settlement of land, power was given to the testamentary guardians of an infant tenant in tail in possession, during the minority, to grant ordinary leases for twenty-one years, building leases for ninety-nine years, and mining leases for sixty years; and power was given to the trustees of a term, at the request and by the direction of the guardians, during the minority, to sell, or exchange, or enfranchise the settled estate.

Cookson, Q.C., and *E. S. Ford* for the trustees.

Cozens-Hardy, Q.C., and *H. J. Lake* for the guardians.

PEARSON, J., held that, during the minority, the power of leasing must be exercised by the guardians with the consent of the trustees, and the powers of sale, exchange, and enfranchisement must be exercised by the trustees at the request and by the direction of the guardians. The effect of section 56, subsection 1, of the Settled Land Act, 1882, is to reserve to the trustees of a settlement the right to exercise the powers conferred on them by the settlement, and to give them, in addition, the right to exercise, in accordance with the Act, the powers conferred on them by the Act, so far as such powers are larger than the powers conferred on them by the settlement. The effect of section 56, subsection 2, of the same Act is, in any case in which the powers conferred on a tenant for life by the Act are larger than the powers for the same purposes conferred on him by his settlement, to authorise him to exercise, in accordance with the Act, the larger powers conferred on him by the Act; and, also, to render his consent necessary to the exercise by the trustees of the settlement of the powers conferred on them by the settlement, whether that consent is or is not required by the settlement. The right of the tenant for life to give or withhold such consent is a power which, under section 60, may be exercised on his behalf during his infancy by the trustees of the settlement.

Queen's Bench Division. May 30. } WEBB *v.* BEAVAN.

Slander—Words imputing criminal Offence or Offences—No specific Offence charged.

Action for slander, in these words: 'I will lock you up in Gloucester gaol next week. I know enough to put you there.'

Demurrer.

Hammond Chambers for the plaintiff.

W. H. Nash for the defendant.

The COURT (POLLOCK, B., and LOPES, J.) overruled the demurrer.

Leave to plead.

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COURT OF APPEAL.

HIGH COURT OF JUSTICE.

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Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
June 13.

PRESTNEY AND OTHERS *v.* MAYOR AND CORPORATION OF COLCHESTER.

Practice—Production of Documents—Country Solicitors—London Agents—Place of Production—Discretion of Court.

This appeal, from a decision of PEARSON, J., fully reported 52 Law J. Rep. Chanc. 347, was dismissed; costs to be costs in the action.

W. Pearson, Q.C., and *H. J. Hood* for the appellants, the plaintiffs in the action.

Philbrick, Q.C., *Smart*, and *E. Smith* for the corporation.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
June 6.

Re HOLMES. WRIGHT *v.* WEATHERHEAD.

Practice — Counter-claim — General Administration—Right to raise Question of Indemnity—Rules of Court, 1875, *Order XXII., Rule* 5.

Adjourned summons.

This was an action by infant beneficiaries to make the trustee of a will liable for the loss of various sums of money alleged to have been improperly left outstanding. The plaintiffs claimed (1) that the defendant might be declared liable, and ordered to repay the sums to the trust estate; (2) the appointment of a receiver; (3) that, so far as might be necessary, the estate might be administered; and (4) the appointment of a new trustee. The defendant delivered a statement of defence and counter-claim, to which he made the tenants for life of the estate defendants, as well as the plaintiffs, and claimed—(1) administration of the estate, and (2) an indemnity from the tenants for life in respect of any sums which he might be liable to repay to the trust estate. The plaintiffs took out this summons to strike out the whole of the counter-claim.

J. G. Wood, for the summons: The counter-claim seeks no relief against the plaintiffs; and, therefore, ought to be struck out. The only object of the counter-claim is to delay the plaintiffs.

Marten, Q.C., and *Dunning*, for the defendant: The counter-claim does seek relief against the plaintiffs, as the defendant claims general administration of the estate. The plaintiffs only claim administration 'so far as may be necessary.' Then the question of indemnity arises in respect of the estate which is the subject of administration.

Wood replied.

BACON, V.C., held that the defendant was seeking relief against the plaintiffs by his counter-claim, and that he had a right to raise the question of indemnity in the administration by way of counter-claim; and dismissed the summons, the costs to be costs in the cause.

Chancery Division.
KAY, J.
June 14.
CAROLI *v.* HIRST.

Practice—Judgment on Admissions in Pleadings—Non-delivery of Reply—Counter-claim—Order XXIX., Rule 12—*Order XL., Rule* 11—*Setting down Action for final Judgment.*

The plaintiff, by his statement of claim, alleged that a sum of money was due to him under certain agreements.

The defendant, by his statement of defence, alleged that, on the contrary, a sum of money was due, under the agreements, to him from the plaintiff, and counter-claimed for such sum.

The plaintiff made default in delivery of reply.

E. S. Ford, for the defendant, moved for judgment against the plaintiff on the claim and counter-claim, citing *Lumsden* v. *Winter*, 51 Law J. Rep. Q.B. 413; L. R. 8 Q.B. Div. 650.

The plaintiff did not appear.

KAY, J., held that, under Order XXIX., Rule 12, and Order XL., Rule 11, taken together, the defendant was entitled to have the statement of claim dismissed on the ground that the defence was admitted, and also entitled to relief on the counter-claim on the ground that the statements therein contained were admitted; and made an order dismissing the original action, with costs, and directing payment of the amount claimed by the counter-claim.

E. S. Ford asked for the direction of the Court as to whether or not the action ought to be set down.

KAY, J. (after conferring with the registrar, Mr. Carrington), said that the rule was that, when there was not a positive and actual admission in the pleadings, but only a constructive admission by default, the action must be set down. Notice of setting down must be given, and the order now made would be subject to that being done.

Chancery Division.
KAY, J.
June 15.
In re THE ROMFORD CANAL COMPANY. POCOCK AND TRICKETT'S CLAIMS.

Company—Debentures—Invalidity—Equitable Transferee—Company not permitted to set up Invalidity as against equitable Transferee.

The above company passed a resolution for the issue of certain debentures to their contractors. This resolution was invalid, because a sufficient number of shareholders were not present at the meeting. The contractor was present, and was aware that the resolution was invalid. Some of the debentures were registered in the name of the contractor, who, for a nominal consideration, transferred them to Y.; but this transfer was not registered. Y. deposited the debentures with P. as an equitable security for sums advanced. Other of the debentures were not registered in the contractor's name, but were similarly transferred by him to Y.; and, in this case, the transfer to Y. was registered. Y. assigned the debentures, by way of equitable security, to T., who took a transfer, which, however, the company refused to register. The question was, whether the company could set up the invalidity of the debentures as against P. and T. respectively.

Charles Walker, Northmore Lawrence, W. D. Rawlins, and *Haldane* appeared.

KAY, J., held, on the authority of *Higgs* v. *The Northern Assam Tea Company*, 38 Law J. Rep. Exch. 233; L. R. 4 Exch. Div. 387, that, as the company had power to issue debentures which would be transferable at law, and the equitable transferees had no reason to suspect any invalidity in the issue, and as, moreover, the conduct of the company in issuing the debentures amounted to a representation to the public that they were legally transferable, there was an equity on the part of the equitable transferees, P. and T., to restrain the company from pleading their invalidity, although that might be a defence at law to an action by the transferor. But, as this right was only equitable, they must be allowed to recover, not the nominal amount of the debentures, but only such sum, not being greater than that amount, as each of them might be able to prove he *bonâ fide* advanced upon the security of the debentures he received.

Chancery Division.
CHITTY, J.
June 18.
In re F. E. MARCH'S ESTATE. MANDER *v.* HARRIS.

Will—Husband and Wife—Gift to a Man and his Wife and to a third Person—Moieties, or Thirds—Married Women's Property Act, 1882.

Demurrer.

F. E. March, who died in April, 1883, by her will made in December, 1880, gave all her property, both real and personal, 'unto my residual legatees C. J. Mander, Esq., and J. Harris, Esq., and Eliza Maria his wife, to and for their own use and benefit absolutely;' and the testatrix appointed the same three persons by name her executors and executrix. The question was whether Mr. and Mrs. Harris took one moiety, and Mr. Mander the other, as under the old law; or whether the operation of the Married Women's Property Act, 1882, was such as to make the property divisible into thirds, Mr. and Mrs. Harris each taking one-third, and Mr. Mander the other third.

Macnaghten, Q.C., and *Bardswell* for the demurrer.

Ince, Q.C., and *R. F. Norton* for the plaintiff.

CHITTY, J., on a review of the whole statute, decided that the property was divisible into thirds; and allowed the demurrer.

Chancery Division.
PEARSON, J.
May 4, 5.
Re BIRKBECK FREEHOLD LAND SOCIETY.

Stamp Duty—Vendor and Purchaser—Deed of Conveyance to Vendor.

In the year 1871 the Birkbeck Freehold Land Society purchased certain plots of land as fee simple, and conveyed them, for value, to some of their members.

By the Epping Forest Act, 1878 (which incorporated the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the purchase-money coming to parties having limited interests, or not making title, and with respect to the conveyances of lands), it was provided that certain lands, including the plots in question,

should be thrown open; and that the arbitrator appointed by the Act should determine what sum should be paid, by the conservators appointed by the Act, to the owner of the soil of any portion of the lands thrown open. After the passing of the Act, the society repurchased these plots from the members to whom they purported to have been conveyed, and repaid them the purchase-moneys they had paid. The re-conveyances were endorsed on the conveyances, but were not stamped. The arbitrator awarded 397*l.* as the sum to be paid for the plots. The society furnished an abstract of title, upon which the conservators required that the deeds of re-conveyance should be stamped at the expense of the society. The society declining to do this, the conservators paid the purchase-money into Court; and, under section 75 of the Lands Clauses Act, 1845, executed a deed poll, vesting the plots of land in themselves in fee. The society now presented a petition for payment of the 397*l.* to them, and that the conservators might pay the costs of the petition.

Owen for the petition.

W. Baker for the conservators.

PEARSON, J., held that it was unnecessary that the deeds of re-conveyance should be stamped, and that it would be sufficient if the allottees joined in the conveyance to the conservators; and made the order asked for.

Chancery Division.
PEARSON, J.
May 7.
Re GRANT. WALKER *v.* MARTINRAU.

Will—Annuity—Insufficient Estate—Rights of Tenant for Life and Remainderman.

Further consideration.

Martha Grant, by her will, dated April 29, 1872, gave pecuniary legacies and annuities; and, subject to the bequests thereinbefore contained, she gave the residue of her personal estate to trustees upon trust for her niece (the plaintiff) for life, with remainder over.

After payment of the pecuniary legacies, the estate was not sufficient to pay the annuities in full, without, from time to time, resorting to the capital. But, if Government annuities were purchased for the annuitants out of the *corpus*, there would be enough left to pay the pecuniary legacies, and leave a small surplus (about 2,000*l.*), the income of which would go to the tenant for life.

Cozens-Hardy, Q.C., and *C. T. Mitchell* for one of the remaindermen.

Blackmore, Maidlow, J. T. Prior, and *Northmore Lawrence* for other parties in the same interest.

Karslake, Q.C., and *Cecil H. Russell*, for the plaintiff, the tenant for life, submitted that, as the estate was not sufficient to pay the legacies and annuities in full, Government annuities should be purchased for the annuitants out of the *corpus*, so as to make a surplus, of which the tenant for life might have the income.

A. Young for the defendant.

PEARSON, J., held that, as between the tenant for life and the remaindermen, the tenant for life was not entitled to have Government annuities purchased for the annuitants. The income must be applied, so far as it would extend, in paying the annuities, recourse being had, from time to time, to the capital, to make up the deficiency.

Chancery Division.
PEARSON, J.
June 14.
In re STEEDMAN'S TRADE-MARKS.

Registration of Trade-marks—Price no Part of Work—Representative Registration—Trade-marks Registration Act, 1875, s. 10.

A chemist applied for the registration of two old trade-marks for medicines, each of which consisted of the words 'Half-dozen Steedman's Soothing Powders, Prepared only by John Steedman, Chemist, Walworth, Surrey,' together with the price, which was in the one case '1*s.* 1½*d.*,' and in the other case '2*s.* 9*d.*' The registrar objected to register both marks, on the ground that they were substantially identical; but offered to register one of the marks with a note, as in *In re Barrows*, 46 Law J. Rep. Chanc. 725; L. R. 5 Chanc. Div. 353, to the effect that the mark might be varied with respect to price.

Bush, for the applicant, moved to place both marks on the register.

Stirling, for the registrar, was not called on.

PEARSON, J., said that the price was not distinctive within section 10 of the Trade-marks Registration Act, 1875, nor a part of the trade-mark at all; it was simply put in to show what was the cost of the article, which varied in different cases; and the motion must be refused, with costs. Representative registration might be allowed, as suggested by the registrar.

Chancery Division.
PEARSON, J.
June 15.
Re HANBURY.

Petition—Money in Court—Interim Investment in Railway Debenture Stock—Costs—The Settled Land Act, 1882, s. 32.

This was a petition for the interim investment of a sum of 9,780*l.*; as to 5,000*l.* in debenture stock of the Great Northern Railway Company, and, as to the remainder, in New 3*l.* per Cents.

The money was paid into Court by the Commissioners of Sewers of the city of London, being the purchase-money of certain freehold houses in the City (forming part of the estate of O. R. Hanbury), which they had taken under the powers of their Act 57 Geo. III. c. xxix.

That Act provided (subsection 89) that, where the purchase-money for any lands should require to be paid into Court, the Court of Chancery might order the expenses of purchases to be made in pursuance thereof, or so much of such expenses as the Court should deem reasonable, to be paid by the commissioners.

The Settled Land Act, 1882, s. 32, provides that, where, under any (special) Act, money is in Court liable to be laid out in the purchase of land, then, in addition to any mode of dealing authorised by the (special) Act, the money may be invested as capital money arising under the Act, 'on the terms, if any, respecting costs and other things, as nearly as circumstances admit, and according to the same procedure, as if' the mode of investment were authorised by the special Act.

Waggett for the petitioners, the trustees of the will of the late O. R. Hanbury.

John Henderson, for the respondents, submitted that they ought not to pay any more costs than if the whole sum in Court had been invested in 3*l.* per Cents., unless

the petitioners would treat the investment as permanent. It was not right, because, under section 32 of the Settled Land Act, an interim investment was to be made in debenture stock, for the benefit of the tenant for life, to throw any further costs upon the respondents.

PEARSON, J., held that they must pay the costs of the petition, and the proposed investments, in the usual way. He thought that to hold otherwise would be, in a great measure, to defeat the object of the Settled Land Act, 1882.

Queen's Bench Division. (*Magistrates' Case.*) June 9. } *Ex parte* SAUNDERS.

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *ss.* 94, 95, 96—*Abatement of Nuisance—Order of Justices—Works necessary for the Purpose—Power to order specific Works.*

This was a rule for a *certiorari* to bring up an order of justices made under section 96 of the Public Health Act, 1875, for the purpose of its being quashed as made without jurisdiction, under the following circumstances: The applicant, being the owner of a house, received notice, under section 94 of the Public Health Act, 1875, to abate a nuisance occasioned by a closet situated in the middle of his house, and remove such closet to an outer wall and fix the soil pipe outside the wall of the house. He made some alteration in the closet with a view of abating the nuisance, but did not remove it; whereupon an order of justices, under section 96, was obtained, by which he was directed to do the work specified in the original notice—viz. remove the closet to an outer wall.

A rule *nisi* was obtained to bring up this order, on the ground that the justices had no power to order any specific work to be done, only that what was necessary for the abatement of the nuisance should be carried out.

Charles, Q.C., and *Herbert Reed* showed cause.

Rose supported the rule, and relied on *Ex parte Whitchurch*, 50 Law J. Rep. M.C. 41.

The COURT (CAVE, J., and SMITH, J.) discharged the rule; holding that the case cited was distinguishable, and that the order of the justices was authorised by the words of the section.

Rule discharged.

Queen's Bench Division. June 14. } MARTIN & Co. *v.* FYFE & Co.

Reference to Master—Action partly Matter of Account— 17 & 18 *Vict. c.* 125, *s.* 3.

This was an action on three bills of exchange. Various defences had been set up; and HUDDLESTON, B., at chambers, had referred the action to a master under section 3 of the Common Law Procedure Act, 1854. From this decision the defendant appealed to the Court, the main question being whether an action, that consists in part only of matters of account, can be referred under the above section.

T. W. Chitty, for the defendant, relied on *Clow* v. *Harper*, 47 Law J. Rep. Exch. 393.

Macmorran, for the plaintiff, cited *Ward* v. *Pilley*, 49 Law J. Rep. Q.B. 705.

The COURT (DENMAN, J., and LOPES, J.) held that an action might be referred to a master under section 3 of the Common Law Procedure Act, 1854, although not consisting wholly of matter of account, distinguishing *Clow* v. *Harper*.

Appeal dismissed, with costs.

Queen's Bench Division. June 9, 16. } HORSLEY *v.* PRICE & Co.

Charter-party—Construction—'At all Times of Tide'—Demurrage.

This was the further consideration on a point of law of the trial of an action from the Gloucester assizes. The action was brought for demurrage on a charter-party, which provided that the steamship Halo should load a cargo of timber at Ljusne and proceed to Sharpness, 'or so near thereunto as she may safely get at all times of tide always afloat.' The Halo arrived at King's Roads, an open roadstead in the Bristol Channel, about seventeen miles below Sharpness, on September 5, 1881, the nearest point in the then state of the tides she could get to Sharpness at high water. The charterers refused to lighten the ship by lightering. On the 9th the ship was able to proceed to Sharpness, which she did, and was discharged by the 14th, three days over the number of lay days allowed by the charty-party, reckoning from the 5th.

H. Mathews, Q.C., and *Lawrence* for the plaintiff.

Powell, Q.C., *Anstie, Q.C.*, and *H. D. Greene* for the defendants.

NORTH, J., held the Halo had completed her voyage on the 5th, and was entitled to demurrage.

Queen's Bench Division. June 19. } NEWTON AND OTHERS *v.* JUSTICES OF THE WEST RIDING OF YORKSHIRE.

Licensing Act, 1874, *s.* 15—*Construction of—Forfeited License—Application of Owner for License—Right of Appeal to Quarter Sessions—Intoxicating Liquor Licensing Act*, 1828.

In this case, a rule *nisi* for a *mandamus* to the justices to hear and determine an appeal of the applicants had been granted under the following circumstances: The applicants were the owners of the Star Inn, of which one Cross was the tenant until November 28, 1882, when he was convicted of an offence against section 9 of 35 & 36 Vict. c. 94, whereby his license became forfeited. On December 14 the owners obtained a temporary authority to sell until the licensing day, under 37 & 38 Vict. c. 49, s. 15. At the next licensing sessions, on January 11, 1883, the owners applied, under the same section, to the justices for a transfer of the license from Cross to them, which was refused. The owners appealed to quarter sessions; but the magistrates held that they had no jurisdiction to hear the appeal.

E. N. Fenwick (with him *F. A. Darwin*), for the justices, showed cause: The question turns entirely upon the construction to be placed upon section 15 of 37 & 38 Vict. c. 49. That does not expressly give a right of appeal; and no such right can be given by implication.

Wightman Wood, for the applicants, in support of the rule: All the provisions of 9 Geo. IV. c. 61 as to the grant of licenses at special sessions are incorporated into section 15. They must be read as if they were part of the section, and they expressly give a right of appeal.

The COURT (WILLIAMS, J., and SMITH, J.) held that section 15 incorporated all the provisions of the Act of George IV., and thereby expressly gave a right of appeal.

Rule absolute.

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Court of Appeal.
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June 14.

MARSH v. EARL GRANVILLE.

Vendor and Purchaser—Condition of Sale—Misleading Condition—Vendor and Purchaser Act, 1874, *s.* 1.

This was an appeal from a decision of FRY, J., reported 52 Law J. Rep. Chanc. 189.

Gifford, Q.C., and *Smart* for the appellants, the vendors.

Cookson, Q.C., and *W. E. Mozley*, for Earl Granville, were not heard.

Their LORDSHIPS affirmed the decision of Fry, J.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
June 15.

SERJENISON v. BELOE.

Court of Chancery of Lancaster Act, 1854 (17 & 18 *Vict. c.* 82), *s.* 8—*Practice—Lancaster Palatine Court—Service of Writ out of Jurisdiction.*

Mr. Clare applied *ex parte* for leave to serve, out of the jurisdiction, the defendant in this action, which had been instituted in the Court of Chancery of the County Palatine of Lancaster.

The defendant (who was the sole defendant) was the trustee of a settlement, and lived at Leamington. He had, however, an office at Liverpool; and it was stated that the necessary documents for the purposes of the action were in his office.

Their LORDSHIPS refused to make a precedent; but gave leave to serve the defendant at Leamington, but only on the plaintiff undertaking to consent to a transfer of the action to the High Court, if the defendant should make an application for that purpose. They also expressed their opinion that the order to serve should not be made in the case of a sole defendant when the defendant objected to it, whether with or without reason.

Court of Appeal.
BRETT, M.R.
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FRY, L.J.
June 20, 21, 22.

ABRATH v. THE NORTH-EASTERN RAILWAY COMPANY.

Malicious Prosecution—Reasonable and probable Cause—Preliminary Question for Jury—'Onus Probandi.'

Appeal from the Queen's Bench Division, making a rule absolute for a new trial. The case is reported 52 Law J. Rep. Q.B. 352, where the facts are fully stated.

The Queen's Bench Division held that, in an action for malicious prosecution, it lies on the defendant to prove the facts which the jury have to find, with a view to the decision of the judge in his favour, on the question of reasonable and probable cause—namely, that the defendant took reasonable care to inform himself of the true state of the case, and that he honestly believed the case which he prosecuted.

The defendants appealed.

The Solicitor-General (*Sir F. Herschell, Q.C.*), *Digby Seymour, Q.C., Gainsford Bruce*, and *J. L. Walton* for the defendants.

Sir H. Giffard, Q.C., and *MacClymont* for the plaintiff.

Their LORDSHIPS allowed the appeal; holding, that in an action for malicious prosecution the plaintiff must prove that the prosecution was instituted; that it was instituted without reasonable and probable cause, and also with a malicious intent; that the burden of proving each and all of these propositions lay upon the plaintiff,

and that if he failed in proving any one of them he failed to make out his claim; and that, in the absence of proof by the plaintiff of the circumstances under which the prosecution was instituted, the judge could not be asked to determine the question whether there was absence of reasonable and probable cause.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
June 25.

In re WARREN'S SETTLEMENT AND CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

Married Woman—Restraint on Anticipation—Conveyancing Act, 1881, *s.* 39.

This was an application, by way of appeal from FRY, J., that the Court would, under section 39 of the Conveyancing and Law of Property Act, 1881, bind the interest of a married woman in the trust funds, subject to her marriage settlement, made in 1859, and in particular that the restraint on anticipation on the wife's life interest in the trust funds might be removed. The property stood limited upon trust for the wife for life, for her separate use, without power of anticipation; remainder to her husband for life, remainder to the children of the marriage, with an ultimate remainder to the husband. The wife was fifty years old; the husband fifty-three. There had been no issue of the marriage, and there was evidence that it was impossible that there could be. They were both in delicate health, and the income of the settled property was too small to supply the comforts which the wife's health rendered of great importance.

It was now desired that the trustees should be enabled to dispose of the property, and either apply it in the purchase of an annuity during the joint lives of husband and wife, or from time to time to apply the capital in increasing the income received by the wife.

Fry, J., refused the application; but stated that he had no objection to the matter being taken to the Court of Appeal, and granted his certificate.

Warmington for the husband and wife and the trustees.

Their LORDSHIPS refused the application, mainly on the ground that it was impossible to assume that the lady was past childbearing, although, in all probability, such was the case.

COTTON, L.J., held that section 39 of the Conveyancing Act only authorised the Court, in a case where a married woman, restrained from anticipation, had made a disposal of her property, which otherwise would not be binding upon her, to make that disposition if beneficial to her; but had not given the Court a general power of removing the restraint on anticipation.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
June 8, 9, 26.

In re BELLAMY.

Conveyancing and Law of Property Act, 1881 (44 & 45 *Vict. c.* 41), *ss.*8, 56—*Vendor and Purchaser—Sale by Trustees for Sale—Payment of Purchase-money to Solicitor of Trustees.*

This was an appeal from a decision of KAY, J., reported 52 Law J. Rep. Chanc. 89, holding that section 56 of the Conveyancing and Law of Property Act, 1881, applies to the case of a sale by trustees as much as that of a sale by an ordinary vendor; and that, where the solicitor of trustees for sale, who had a power of giving receipts, produces to the purchaser a deed duly executed by the trustees, having in the body thereof, or endorsed thereon, a receipt duly signed by the trustees, the purchaser ought to pay the purchase-money to such solicitor, unless he has reason to suspect an intended misapplication of the money.

W. Pearson, Q.C., and *Pownall*, for the purchasers, the Metropolitan Board of Works, who also were the appellants, contended that section 56 of the Act did not apply to the case of trustees for sale; and that the purchasers were entitled, as before the Act, and in accordance with the practice of conveyancers, to require that the vendor should either attend personally to receive the purchase-money, or give a written authority to them to pay the purchase-money into a bank in the joint names of the vendors.

G. Henderson, for the vendors, relied on sections 8 and 56 of the Act, and the judgment of Kay, J.

Cur. adv. vult.

June 26.—Held, by COTTON, L.J., and BOWEN, L.J. (*dissentiente* BAGGALLAY, L.J.), that section 56 of the Act conferred no greater power or authority on trustees than they had before the Act, and was only intended to apply to those cases where (before the Act) a purchaser would have been safe in paying the purchase-moneys to the solicitor of the vendor, on the production by the solicitor of a written authority to that effect from the vendor, and to obviate the necessity of such a written authority. Consequently, the contention of the purchaser was right, and the appeal must be allowed.

Held, per BAGGALLAY, L.J., that the section was intended to meet such a case as the present; that the practice of conveyancers was contrary to *Hope* v. *Liddell*, 25 Law J. Rep. Chanc. 90, which decision had never been overruled; and that the judgment of Kay, J., ought to be upheld.

Appeal accordingly allowed; but without costs, the appellants not asking for them.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
June 19, 20.

In re LIVESEY. BARON *v.* ASPDEN.

Will—Construction—Annuity—'Corpus' or Income.

The testator in this case, by his will dated March 15, 1875, after devising his dwelling house to his wife during her life or widowhood, gave to her for her life, if she should continue his widow, an annuity of 100*l.*, and to his brother an annuity of 50*l.*, and to his sister-in-law an annuity of 25*l.*; and he directed his trustees either to pay the said annuities respectively out of the rents and profits of his real or leasehold estates or, at their discretion, out of the interest, dividends, or annual proceeds of the aggregate trust funds thereinafter mentioned. And the testator devised all his freehold, copyhold, and leasehold estates (subject, as to his dwelling house, to the life interest thereinafter given to his wife), and the residue of his personal estate, to trustees upon trust for sale and conversion; and declared that all the stocks, funds, and securities upon which the estate should be invested should form an aggregate fund to be held upon trust, in the first place, out of the annual produce

thereof to raise and pay the annuities thereinbefore given, and subject thereto upon further trust to invest in the names of his trustees the surplus which, after satisfying the said annuities and all expenses incident to the execution of the trusts thereby created, should, from time to time, remain in his trustees' hands of the yearly produce of the said fund as therein mentioned, and by similar investments to accumulate the income of the aggregate fund for twenty-one years; and he directed his trustees to stand possessed of the aggregate fund, with the accumulations thereof, in trust to pay and divide the interest, dividends, and annual proceeds thereof equally between his nephews and nieces thereinafter named as therein mentioned.

The income of the testator's estate being insufficient to pay the annuities in full, the question arose, whether the annuities were charged upon the *corpus* or the income of the estate.

Farwell for the annuitants.

Bardswell for the residuary legatees.

KAY, J., held that the annuities were charged upon the *corpus* of the testator's estate.

Chancery Division. KAY, 7. June 25. } *In re* SAUNDERS. MASTERS *v.* SAUNDERS.

Annuity—Will—Condition or Limitation—Public Policy—Condition that Parent should permit Child to be educated under Control of third Person.

A testator, by his will, settled a large property on his grand-niece, M. A. M., and, by a codicil, gave to her father, J. K. S. M., an annuity of 100*l.* for his life, issuing out of and chargeable upon certain settled land, 'to be conditional only on his permitting his daughter to remain and be educated under the charge and care of the testator's daughter;' and the testator directed that the said annuity should absolutely cease and determine should the said J. K. S. M. cause or require his daughter to be removed from the charge and care of the testator's daughter. J. K. S. M. retained his daughter under his own sole control. The question was whether he was entitled to the annuity.

Graham Hastings, Q.C., and *Maidlow* for J. K. S. M.

Fischer, Q.C., and *Dauney, contra.*

KAY, J., held that the case was not one of condition, but of the limitation of an annuity until the happening of a certain event—viz. the refusal of J. K. S. M. to allow his daughter to remain under the charge of the testator's daughter. That event had happened; and the annuity had, therefore, ceased. Had the case been one of a condition, his lordship intimated grave doubt whether such a condition could be held bad on grounds of public policy.

Chancery Division. KAY, J. June 26. } WOOD *v.* AINLEY.

Will—Construction—Practice—Next Friend—Costs—Costs unnecessarily incurred not allowed as against Infants' Estate—Gift on Trust to pay to A., her Heirs and Assigns, during her Life, with Gift over on her Death without Issue.

The testator, who died on July 16, 1851, by his will, dated July 8, 1851, devised certain houses, after the death of his wife, to trustees upon trust that they should 'pay, or otherwise permit and suffer, the testator's daughter, Harriet, and her heirs and assigns to receive and take the rents and profits . . . during her life,' and from and after her decease without issue, then the testator gave and devised the same to his natural son, Benjamin, and daughter, Anice. Other property was specifically given in a similar way, with a corresponding gift over to Anice and also to Benjamin, but, in his case, without the words 'during life.' Harriet Ainley, afterwards Wood, died leaving two infant children, the plaintiffs. The question to be determined in the action was, whether, under the above gift, Harriet was entitled in fee simple or for life.

The action was brought by the plaintiffs by their next friend for the execution of the trusts of the will. At the hearing a judgment was taken directing inquiries as to the particulars of which the property specifically given by the will consisted and as to the testator's family. The chief clerk made his certificate, and the action came on on further consideration. The value of the estate was not large.

Bonsor for the plaintiffs.

E. Ford and *Dibdin* for other parties.

KAY, J., held that Harriet took in fee simple with an executory gift over. The words 'during her life' must be rejected. He held, however, that the whole question might, and ought to, have been raised at the hearing on demurrer; and he therefore ordered that such costs only should be allowed as against the estate of the infant plaintiffs as would have been allowed if the action had been tried on demurrer.

Chancery Division. CHITTY, J. June 22. } UPMANN *v.* FORESTER.

Injunction—Infringement of Trade-mark—Innocent Consignee—Costs.

The defendant, a manufacturer of earthenware, ordered 5,000 cigars to be consigned to him by a foreign dealer. The cigars were forwarded to this country in boxes bearing a spurious brand purporting to be that of the plaintiffs. In an action by the plaintiffs for an injunction to restrain the defendant from selling the cigars, for destruction of the boxes, and for damages, the defendant, immediately on service, offered the plaintiffs all the relief asked; and, at the hearing of a motion for an interim injunction, assented to an undertaking in the terms of the writ, and the question of costs was reserved.

Romer, Q.C., and *E. Cutler* for the plaintiffs.

Colt for the defendant.

Held, that the defendant, notwithstanding that he did not deal, and never contemplated dealing, in cigars, but had bought the cigars for family use, and, until he was served with the writ, had not only been unaware of the plaintiffs' name as manufacturers of cigars, but had not even seen the cigar boxes consigned to him, nor known that they had any brand, nevertheless had committed an infringement of the plaintiffs' trade-mark, and must, therefore, be ordered to pay the costs of the action.

Leave to appeal was declined, on the ground that the principle involved was covered by authority, and the question was one of costs only.

Chancery Division. CHITTY, J. June 23. } *In re* THE EARL OF CHESTERFIELD'S TRUSTS.

Apportionment—Tenant for Life and Remainderman—Income and Capital—Power to postpone Conversion—Valuable Expectancy—Compound Interest.

A testator gave his residuary estate to trustees upon trust to convert at discretion and invest, with power to postpone conversion and to pay the income to tenants for life, with remainders over in strict settlement. Part of the residuary estate consisted of a charge on an expectancy and of policies of life insurance, and was not realised by the trustees at the date of the testator's death, but afterwards fell in with advantage to the trust estate.

Macnaghten, Q.C., and *Douglass Round*, and *Romer, Q.C.*, and *Bromehead*, for the parties.

CHITTY, J., held that, there being no deficiency, the proper mode of apportioning the sum so received between the tenants for life and the trust estate was to calculate what sum invested at the date of the testator's death at 4 per cent. interest, with yearly rests, would at the date of the receipt have produced the amount actually received, and that the sum arrived at by such calculation should be treated as capital and the residue as income, such income being further apportionable between the successive tenants for life. *Beavan* v. *Beavan*, Romilly, M.R., Feb. 22, 1869, followed.

Chancery Division. PEARSON, J. June 14. } *In re* MUNDELL. FENTON *v.* CUMBERLEGE.

Practice—Evidence—Cross-examination on Affidavit—Abuse of Process of Court—Order XV., Rules 1, 2; *Order XXXVII., Rule* 2; *Order XXXVIII., Rule* 4.

The Court will prevent the process of the Court from being abused for the purpose of oppression.

The plaintiff in an admininistration action having, without any necessity, made an affidavit for the purpose of an application in chambers for accounts, the defendants proposed to cross-examine her on her affidavit; and, on her refusing to appear, applied for an order on her to attend.

H. A. Giffard, Q.C., and *Ingle Joyce* for the motion.

Higgins, Q.C., and *Northmore Lawrence, contrà.*

PEARSON, J., held that the affidavit having been immaterial to the relief sought, and no reason having been suggested for supposing that the cross-examination could be productive of any result, the application was an abuse of the process of the Court for the purpose of oppression, and must be refused.

Chancery Division. PEARSON, J. June 20. } *In re* DAVIES TO JONES AND EVANS.

Vendor and Purchaser—Will—Construction—Devise in Trust—22 & 23 Vict. c. 35, *s.* 14, 16.

Adjourned summons under the Vendor and Purchaser Act, 1874.

W. A. made his will, after specific bequests, and a direction to his executors to pay debts in the following terms: 'I give, devise, and bequeath all my real and personal estate to my wife M. A. and my four daughters, in manner and forms following: After the discharge of all just debts, the investment of 6,000*l.* for the benefit of my two sons, also two sums of 50*l.* each, which I hereby bequeath to my executors, I ordain that the residue of all my personal and real estate shall be equally divided between my said wife and my said four daughters. Provided as follows—my said wife, M. A., shall enjoy her share during the term of her natural life, and I direct my surviving executor, his heirs, assigns, or executors, to distribute the said share, after the decease of my said wife, among my said four daughters, share and share alike.' Then the wife and T. D. were appointed executors to act jointly in carrying out all the intentions of the testator's will.

T. D. having, after the death of M. A., contracted to sell a part of the testator's real estate, the question arose whether the surviving executor could make a good title to the property without the concurrence of the surviving daughters of the testator. The debts were still unpaid.

Lewin, for the vendor, argued that the testator, by imposing duties upon the executor, had of necessity vested the fee in him, and that in any case he was authorised to sell and convey the property, under Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 14, 16.

Loughborough, for the purchasers, contended that the testator had devised the property, charged with debts and legacies, to his widow and four daughters, upon certain trusts; that the fee was, therefore, vested in the survivors of them, and that they, as devisees in trust within 22 & 23 Vict. c. 35, s. 14, were the proper persons to sell.

PEARSON, J., held that from the whole of the will it appeared that the testator intended his executors to carry out all the intentions of his will, including the distribution of the estate among his wife and daughters; and that he did not intend his wife and daughters to take anything until after payment of debts and legacies; that the executors were, therefore, the persons able to deal with and sell the property, so long as the debts remained unsatisfied, and that the surviving executor could sell and make a good title without the concurrence of the survivors of the widow and daughters.

Chancery Division. PEARSON, J. June 20. } *In re* THE DUKE OF NEWCASTLE'S SETTLED ESTATE.

Settled Land Act, 1882, *ss.* 3, 17, 58, 60—*Settlement—Power of Sale—Wider Power in Act—Consent necessary.*

In this case (noted *ante*, p. 80) a power of sale was given by the settlement to the trustees, exercisable, during infancy of the person entitled to the possession or receipt of the rents, with the consent of his guardians. The power did not authorise the sale of surface without minerals; but the trustees now proposed to make such a sale under the powers conferred on them by the Settled Land Act, and the question was submitted to the Court whether the consent of the guardians was necessary to the exercise of the statutory power.

Cookson, Q.C., and *E. S. Ford* for the trustees.

Cozens-Hardy, Q.C., and *H. J. Lake* for the guardians.

PEARSON, J., said that where the trustees were exercising a power conferred upon them by statute, and not by the settlement, the conditions imposed by the settlement upon the exercise of the different powers thereby conferred did not apply; and, as the statute required no consent in the case before him, the trustees could sell without the guardians' consent.

Table of Cases.

HOUSE OF LORDS.

House of Lords. June 26, 28.] THE MERSEY DOCKS AND HARBOUR BOARD *v.* LUCAS.

Income-tax—Profits—Statutory Restrictions—Corporation.

The Mersey Docks and Harbour Board appealed from the decision of the Court of Appeal which reversed that given in their favour in the Queen's Bench Division.

The case is reported below, 50 Law J. Rep. Q.B. 449; 51 *ibid.* Q.B. 114.

Webster, Q.C., and *Bigham* for the appellant.

Sir H. James (*Attorney-General*), *Sir F. Herschell* (*Solicitor-General*), and *A. V. Dicey* for the respondent, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD FITZGERALD) affirmed the judgment of the Court of Appeal, with costs.

House of Lords. June 28, 29.] ROBINSON *v.* THE LOCAL BOARD FOR BARTON, &c.

Statute—Construction—Local Government Act, 1858, *s.* 34—*Public Health Act*, 1875, *ss.* 156, 157—*'New Street'—'Street.'*

The plaintiff appealed from a decision of the Court of Appeal, which reversed one of FRY, J. The case is reported below, 51 Law J. Rep. Chanc. 467; 52 *ibid.* Chanc. 5.

Cookson, Q.C., and *Davey, Q.C.* (*Byrne* with them), for the appellant.

Rigby, Q.C., and *Buckley* for the respondent.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD FITZGERALD) reversed the judgment of the Court of Appeal, and restored that of Fry, J., with costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. COTTON, L.J. LINDLEY, L.J. June 21. } *Ex parte* ARNAL. *In re* WILTON.

Bankruptcy—Leasehold—Interest of Bankrupt—Disclaimer—Leave of Court—Terms—Bankruptcy Act, 1869, *s.* 23—*Bankruptcy Rules*, 1871, *Rule* 28.

The debtor in this case held his business premises under a lease at a rent of 169*l.* The trustee in the liquidation was appointed on January 3, and continued in possession of the premises until March 6; and the business was carried on by the debtor as agent for the trustee. The trustee then applied for leave to disclaim, and it appeared that only very slight benefit had resulted to the debtor's estate from the occupation of the trustee. The registrar gave the trustee leave to disclaim without imposing any terms upon him. The landlord appealed.

Cooper Willis, Q.C., and *Forbes Lankester* for the appellant.

Nicholson and *Wyatt Hart* for the trustee.

Their LORDSHIPS held that, where a trustee in bankruptcy applies for leave to disclaim a lease of the bankrupt after having been in occupation of the premises since his appointment, if the occupation has produced, or was expected to produce, any benefit to the estate, the Court before giving leave will put the trustee upon terms to compensate the landlord. In this case they ordered the trustee to pay 20*l.* as compensation for the occupation. In the case of *Ex parte Izard*, L. R. 23 Chanc. Div. 115, rather a narrower view had been taken by the Court than that which was taken in the case of *Ex parte Isherwood*, 52 Law J. Rep. Chanc. 370; L. R. 22 Chanc. Div. 384; and their lordships considered that they ought to adopt the view taken by COTTON, L.J., in

the latter case—viz. that the Court ought to have regard not only to the question whether the occupation of the trustee has produced any benefit to the estate, but also to whether it was contemplated as likely to produce such a benefit.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
LINDLEY, L.J.
June 21.
Ex parte LOVERING. *In re* MURRELL.

Bankruptcy—Reputed Ownership—Order and Disposition—Articles not connected with Debtors' Business—Bankruptcy Act, 1869, *s.* 15, *subs.* 5.

The debtors in this case were a firm of woollen manufacturers. One of the partners was also a connoisseur in pictures, and was constantly in the habit of buying them and keeping them at the firm's place of business. They really belonged to his separate estate; but some of the creditors of the firm deposed that, having seen the pictures at the place of business, they supposed them to be the property of the firm, and had given the firm credit accordingly. The trustee of the joint estate claimed the pictures as having been in the order and disposition of the firm as reputed owners.

Winslow, Q.C., and *Swinfen Eady* for the trustees.

Horton Smith, Q.C., and *Horne Payne* for the separate creditors.

Their LORDSHIPS considered that, the pictures being articles not connected in any way with the firm's trade, there was no inference that they were the property of the firm. They therefore held that the pictures were not in the reputed ownership of the firm.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
June 23.
BEER *v.* TOAKES.

Debtor and Creditor—Accord—Agreement to accept less Sum than Debt—Payment to Creditor's Nominee.

Appeal from the Queen's Bench Division, reported 52 Law J. Rep. Q.B. 426.

The defendant, being indebted to the plaintiff, entered into an agreement with her or her nominee to pay a less sum than the debt payable in consideration of the plaintiff not taking further proceedings.

The Queen's Bench Division (WILLIAMS, J., and MATHEW, J.) held that there was a sufficient consideration for the agreement.

The plaintiff appealed.

Gaskell for the plaintiff.

Holl, Q.C., and *Winch* for the defendant.

Their LORDSHIPS allowed the appeal, and ordered judgment to be entered for the plaintiff.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
June 23.
In re MELLY.

Practice—Lunacy—Payment off of Mortgage—Form of Order.

This was a petition presented by the committee of a lunatic to confirm the master's report, by which it was proposed that a mortgage on some leaseholds of the lunatic should be paid off, and the property reconveyed to the lunatic.

It was not known whether the lunatic had or had not made a will prior to his lunacy bequeathing the property, and some difficulty was felt as to the form of the order.

E. W. Byrne, for the petitioner, referred to *Re Leeming*, 3 D. F. J. 43.

Their LORDSHIPS held that the form of the order must, as in the case cited, provide for the payment off of the mortgage without prejudice to the question how the mortgage debt should be ultimately borne; the mortgage to be kept on foot by being transferred to the committee, to be dealt with as the Court should direct.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
June 23.
In re ORDE.

Practice — Appointment of new Trustee—Will of deceased Lunatic—Trustee Act, 1850, *s.* 32—*Trustee Extension Act*, 1852, *ss.* 9, 10.

In this case the deceased lunatic had, prior to his lunacy, made a will bequeathing his residuary real and personal estate to two trustees upon certain trusts.

Both the trustees predeceased the lunatic.

Under the lunacy all the real and personal estate of the lunatic had been sold and invested in Consols.

A petition was now presented, entitled in lunacy and the Chancery Division, by the beneficiaries under the will, praying that two new trustees of the will might be appointed, and that the Consols representing the real estate might be transferred to the new trustees, and that the Consols representing the personal estate might be transferred to the administrator with the will annexed.

W. Barber, Q.C., and *Manisty* for the petitioners.

Their LORDSHIPS made the order, being of opinion that the case came within section 9 of the Trustee Extension Act, 1852.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
June 28.
DAVIS *v.* BURTON (BLAIBERG, CLAIMANT).

Bill of Sale—Bills of Sale Act, 1882 (45 & 46 *Vict. c.* 47), *ss.* 7, 9—*Accordance with Form of Bill of Sale in Schedule.*

Appeal from the Queen's Bench Division upon a special case, which raised the question whether a bill of sale was void as against an execution creditor as not being in accordance with the form given in the schedule to the Bills of Sale Act (1878) Amendment Act, 1882. The case is reported 52 Law J. Rep. Q.B. 334.

The Queen's Bench Division held that the bill of sale, not being in accordance with the form given in the schedule, and being in violation of section 7 of the Act of 1882, was void.

The claimant appealed.

Winslow, Q.C., and *A. T. Lawrence* for the claimant.

Meadows White, Q.C., and *C. C. Scott* for the execution creditor.

Their LORDSHIPS affirmed the judgment of the Queen's Bench Division, and dismissed the appeal.

Court of Appeal.
BRETT, M.R.
LINDLEY, L.J.
FRY, L.J.
June 29.
KEARSLEY *v.* PHILIPS AND OTHERS.

Mortgagor and Mortgagee—Effect of Attornment by Mortgagor as Tenant—Distress on Goods of third Party on the mortgaged Premises.

Appeal from the judgment of FIELD, J., on a demurrer to a reply.

The question raised was whether, when a mortgagor has attorned to the mortgagee as tenant of the mortgaged premises, the mortgagee can, in case of failure by the mortgagor to pay the rent reserved, distrain on goods of a third party, who has no notice of the mortgage, which are found upon the mortgaged premises.

In an action by the owners of such goods against mortgagees for illegal distress, Field, J., upon demurrer, gave judgment for the defendants.

The plaintiff appealed.

Ambrose, Q.C., and *Bigham* for the appellant.

Smyly, for the defendants, was not called on to argue.

Their LORDSHIPS affirmed the judgment of Field, J.; holding that such an attornment by a mortgagor creates a rent properly so called, with all its incident remedies.

Court of Appeal.
LINDLEY, L.J.
FRY, L.J.
June 11, 30.
FRASER *v.* MASON AND ANOTHER.

Copyhold—Fine on Admittance—Assessment of Amount.

Appeal by the defendants from the judgment of the Queen's Bench Division, reported 52 Law J. Rep. Q.B. 423.

The question raised by the appeal was, whether the lord of a manor who is entitled to a reasonable fine on each admittance to a copyhold hereditament is entitled to assess the fine at three years' improved annual value, and to recover the same without assessing a precise sum as the amount sought to be recovered.

The Queen's Bench Division gave judgment in favour of the lord of the manor, the plaintiff.

The defendants appealed.

Jelf, Q.C., and *Will* for the appellants.

Anstie, Q.C., and *Rose* for the plaintiff.

Their LORDSHIPS, having reserved judgment, now affirmed the judgment of the Queen's Bench Division, in favour of the plaintiff.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
July 2.
LADD *v.* PULESTON.
PULESTON *v.* LADD.

Action in Queen's Bench Division on Writ specially endorsed—Subsequent Action in Chancery Division for an Account—Transfer of Action—Judicature Act, 1873, *s.* 34.

This was an appeal from a decision of FRY, J., noted *ante*, p. 48.

Anderson for the appellants, the defendants in the Chancery action.

Decimus Sturges for the respondent.

After some discussion, it was agreed, at the suggestion of their LORDSHIPS, that, by consent, further proceedings in the action in the Chancery Division should be stayed until the trial of the action in the Queen's Bench Division; the plaintiff in the latter action undertaking that, if the judge should direct at the trial, or it should otherwise become necessary to take an account, he would consent to the account being taken in the action in the Chancery Division, and to all orders that might be necessary for that purpose.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
June 23.
In re THE ALLIANCE SOCIETY.

Company — Mutual Benefit Society — Winding-up — Surplus Assets—Withdrawing Members—Charge or Lien on particular Fund—Payment of Subscriptions in Advance—Priorities—Companies Act, 1862, *s.* 133.

The objects of this society, which was registered under the Companies Acts, were to receive subscriptions from members, and to make advances to them, with power for subscribing members to withdraw. As to withdrawing members it was provided by the articles of association that any member giving notice of withdrawal should be entitled to have the total amount of the subscriptions, which should have been paid upon each unappropriated certificate held by him, returned to him; but such payments were only to be made in the order of the date of the receipt of the notices, and only out of the moneys received by the society from time to time, after the receipt of the notice, in repayment of appropriations and premiums to the credit of the particular fund from which such withdrawal took place. Provision was also made for the closing of funds; and, in such event, all instalments of appropriations and premiums and other moneys thereafter received in respect of such fund were to be distributed in dividends amongst the registered holders of certificates, and applied in the first place in repayment in equitable proportions of subscriptions standing to the credit of each member of such fund. In the voluntary winding-up of the society, there being no outside creditors, questions arose as to the mode of distribution of the assets, so far as related to members who had given notice of withdrawal before the closing of the particular funds or of the winding-up, and as to members who had paid subscriptions in advance.

Graham Hastings, Q.C., and *William King* for the liquidators.

Rigby, Q.C., Rowden, Northmore Lawrence, Geare, and *Temple Cooke* for the several classes of members.

KAY, J., held, upon the construction of the articles, that the provision as to the return of subscriptions to a withdrawing member only applied so long as the society was a going concern, and that it was not the intention of the articles to give any priority or preference to withdrawing members, or any lien or charge on any particular fund, as against other members in the event of a dissolution and winding-up; and that the assets ought to be distributed, so far as they would go, rateably in proportion to the amounts of the subscriptions, whether paid in advance or not, which the respective members were entitled to receive back from the society.

Chancery Division.
KAY, J.
June 29.
} LETT *v.* RANDALL.

Vendor and Purchaser—Particulars of Sale—Misstatement—Notice to Purchaser—Compensation.

Adjourned summons.

In the above action certain property was ordered to be sold by auction, and F. Charsley was declared to be the purchaser of Lot 3. Lot 3 was described in the particulars of sale as 'let on lease for a term of seventy-five years from September 29, 1850.' This was a misdescription, inasmuch as the lease really dated from September 29, 1858.

By the ninth condition of sale it was provided that any error or misstatement in the particulars of sale should not annul the sale or entitle the purchaser to be discharged from his purchase, but compensation should be made to or by the purchaser, as the case might be.

After the sale the purchaser discovered the error in the particulars, and took out the present summons, claiming compensation under the above condition.

The vendors asserted that the purchaser was, at the time of the sale, aware of the error in the particulars, and the evidence on this point was conflicting; but the purchaser contended that, even if he had knowledge of the misstatement, yet, inasmuch as he bought under the conditions, he was entitled to compensation.

G. Cave (*Rigby, Q.C.*, with him) for the purchaser.

J. M. Lloyd for the vendors.

KAY, J., held that, assuming the purchaser had notice of the misstatement in the particulars of sale, that could not alter the contract of the vendors, which was to give the purchaser compensation for any such misstatement.

Chancery Division.
CHITTY, J.
June 20.
} *In re* THE LONDON STEAMBOAT COMPANY.

Companies Act, 1867, *s.* 15—*General Orders, March*, 1868, *Order XX.—Reduction of Capital—Registration and Advertisement of Order.*

The advertisement of the registration of an order confirming the reduction of a company's capital and of the minute mentioned in section 15 of the Companies Act, 1867, and in Order XX. of the General Orders of March, 1868, cannot be dispensed with.

H. Burton Buckley for the company.

Chancery Division.
PEARSON, J.
June 27.
} BADISCHE ANILIN UND SODA FABRIK *v.* LEVINSTEIN.

Patent Action—Practice—Use of independent scientific Assistance by the Court—Procedure in Cases of alleged Infringement by Use of a secret Process—Infringement—New Process—New Result—Chemical Equivalents.

Where, in a patent case, the evidence is conflicting and indecisive on a scientific point, the Court is at liberty to obtain competent independent scientific assistance in determining the matters at issue.

Where, in a patent case, the defendant denies infringement, but objects to state in open Court the process he actually practises, on the ground that it is the subject of a valuable secret, of the benefit of which he would be deprived by disclosure, the Court will first ascertain whether the defence fails in all other respects than infringement; and then, unless the defendant prefers to submit to an injunction, will hear the evidence and argument with respect to the alleged infringement by the secret process with closed doors; and, with a view to further protecting the secret, will order the shorthand notes of the private hearing to be impounded until either an appeal is entered, or the right to appeal is abandoned.

Where a patent is obtained for the use of particular chemical materials for arriving at a particular chemical result, it is no infringement to arrive at the same result by the use of other chemical materials which were not known to be equivalent for the materials mentioned in the specification at the time when the patent was obtained.

Where a patent is obtained for a new process for arriving at a known result, it is no infringement to arrive at the same result by a different process.

Where a patent is obtained for a new result, and one process of arriving at that result is described in the specification, it is an infringement to produce the same result by any process.

Aston, Q.C., Webster, Q.C., and *W. N. Lawson* for the plaintiffs.

Higgins, Q.C., and *Chadwyck Healey* for the defendants.

Queen's Bench Division.
June 18, 28.
} REGINA *v.* ILLINGWORTH.

Quarter Sessions Practice—Ground of Appeal—No Jurisdiction—Road not Highway—Generality—Point not raised below.

This was a special case, stated by the Court of Quarter Sessions for the North Riding of Yorkshire, for the opinion of the Court.

In April, 1882, Illingworth took out a summons against the district board of Bulmer, for non-repair of two highways in the parish. It was not suggested by the board at petty sessions that the said roads were not highways, nor did they dispute their liability to repair. The justices, upon the report of a person appointed by them, found that the roads were out of repair, and ordered the district board to pay the amount required to repair the roads. The district board appealed to quarter sessions. They had at all the hearings before the justices admitted their liability to repair the roads, and never suggested that they were not highways. Upon the hearing of the appeal, they called no witnesses of their own to prove that the roads were not highways, but cross-examined the respondent's witnesses to show it. The first two grounds of appeal were—(1) that the justices had no jurisdiction to make the order; (2) that the said order was contrary to law; but there was no ground of appeal to the effect that the roads were not highways. The Court of quarter sessions would have found on the evidence that the roads in question were not public highways; but they left it to this Court to say whether, under the circumstances, it was open to the highway board to take the objection.

Forbes, Q.C., and *Anderson* for the respondent.

Charles, Q.C. (with him *Scott Fox*) for the appellants.

Cur. adv. vult.

June 28.—The COURT (WILLIAMS, J., and SMITH, J.) held that the objection was not open to the highway board.

Judgment for the respondent.

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COURT OF APPEAL.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
July 6.

In re BLACKBURN, &c., BENEFIT BUILDING SOCIETY.

Benefit Building Society—Notice of Withdrawal by investing Members—Winding-up—Priorities of investing Members 'inter se.'

Appeal from a decision of the Vice-Chancellor of the County Palatine of Lancaster, which raised the question whether, in the winding-up of the society, those investing members who had given notice of withdrawal prior to the winding-up were entitled to be paid their moneys in priority to those investing members who had given no notice of withdrawal.

The question turned mainly on rule 3 of the society, which provided: 'Any member of the society shall be allowed to withdraw (provided the funds permit) sums not exceeding 10*l.* by giving seven days' notice, and sums exceeding 10*l.* by giving one month's notice, according to the printed form in the schedule annexed. No further liabilities shall be incurred by the society till such member has been repaid.'

The claims of the investing members who had given notice of withdrawal amounted to about 45,000*l.*, and the claims of those investing members who had given no notice of withdrawal amounted to about 125,000*l.*

It was admitted that, after payment of all outside creditors, the realised assets of the society would amount to about 45,000*l.*

The Vice-Chancellor held that those members who had given notice of withdrawal were entitled to be paid their claims in priority to those who had not given notice of withdrawal.

The appeal was against this decision.

Ince, Q.C., and *Burton Buckley*, for the appellants, contended that rule 3 only applied to a going concern; that the investing members who had given notice of withdrawal were not entitled to any preferential payment in the winding-up, unless the rules gave it to them expressly; that, on the true construction of the rule, no such priority was given; and that, therefore, all the investing members were entitled to participate *pari passu* in the assets of the company.

Their LORDSHIPS held that rule 3 was not restricted to a going concern; that, when all the outside creditors were paid, the rule must be applied to ascertain the right of the members *inter se*; and that, on the true construction of rule 3, the investing members who had given notice of withdrawal were entitled to the priority they claimed.

Court of Appeal.
BAGGALLAY, L.J.
COTTON, L.J.
BOWEN, L.J.
May 22, 30.
July 9.

PHILLIPS *v.* HOMFRAY.
HOMFRAY *v.* PHILLIPS.

Wrongful User of Way-leave for Minerals—Action for Compensation and Damages for the Trespass—Judgment—Inquiry as to Damages—Death of Wrongdoer pending Inquiry—Cesser of Cause of Action—Application of Maxim, 'Actio personalis moritur cum persona.'

These were cross appeals from a decision of PEARSON, J., reported 52 Law J. Rep. Chanc. 401, a defendant, the executrix of the deceased defendant, Fothergill, ap-

pealing from so much of his lordship's order as directed the second and third inquiries under the judgment in the action to be proceeded with, on the ground that the cause of action thereunder had survived against the appellant as such executrix; and the plaintiffs appealing from so much of the order as directed the fourth inquiry under the judgment to be stayed, on the ground that the cause of action thereunder had not survived against such executrix.

Rigby, Q.C., and *Osler* for the appellants in the first appeal, who was also the respondent to the cross appeal.

Graham Hastings, Q.C., and *Maclean* for the plaintiffs, the appellants in the cross appeal.

Cur. adv. vult.

July 9.—Held by COTTON, L.J., and BOWEN, L.J. (*dissentiente* BAGGALLAY, L.J.), that the case was not within that class of cases in which a deceased man's estate remained liable for a profit derived by it out of his wrongful acts during his lifetime. The only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act could be pursued against the estate of a deceased person who had done the act, were those in which property, or the proceeds or value of property, belonging to another, had been appropriated by the deceased person and added to his own estate or moneys. Here, no doubt, a personal benefit had accrued to the deceased from his tortious user of the way-leave; but it could not be said that there was anything amongst the assets of the deceased that in law or equity belonged to the plaintiffs. The claims, therefore, of the plaintiffs, to which the second and third inquiries were directed, abated by the decease of the defendant Fothergill; and the appeal of his executrix must be allowed, with costs.

Held, by BAGGALLAY, L.J., that the causes of action which were the foundation of the decree made in the suit were such as, within the rule of *Hambley* v. *Trott*, 1 Cowp. 374, to entitle the plaintiffs to maintain their suit against the executrix of the deceased defendant Fothergill, in respect of the subject-matter of the second and third inquiries directed by the decree.

Held, further, *per Curiam*, that the plaintiff's appeal as to the fourth inquiry, being a pure claim for damages for a wrongful act, which did not result in any profit to the wrongdoer, failed; and must be dismissed, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
July 6.
} HARRISON *v.* LEUTNER.

Practice—Costs—Higher or lower Scale—Fraudulent Misrepresentation — Discretion — Additional Rules, August, 1875, *Order VI., Rules* 1 *and* 3—*Judicature Act*, 1875, *Appendix A., Part II., s.* 4.

The above action had been brought in the Chancery Division by a shareholder against the directors and the Wreck Recovery Salvage Company (Limited), in which, after charging fraudulent misrepresentation, the plaintiff claimed (1) rescision of his contract to take 10 A 10*l.* and 10 B 1*l.* shares; (2) removal of his name from the register and list of contributories; (3) an injunction restraining the company or its liquidator from prosecuting any action for recovery of the unpaid balance on the said shares; and (4) a declaration that the defendants were jointly and severally liable to pay to the plaintiff the 40*l.* paid in respect of the said shares, with interest, damages, and costs, and that the plaintiff might be at liberty to prove, in the winding-up, for the said sum of 40*l.*, interest, damages, and costs.

The action, after a five days' hearing, was dismissed, with costs.

The plaintiff, when he issued the writ, took out a certificate for 'lower scale' of costs, and several of the defendants took and paid for, on the lower scale, copies of this certificate. When the defendants' bill of costs went for taxation the taxing master overruled this certificate, and taxed the costs on the higher scale, stating that he could not refer the relief sought to any of the definitions in the Additional Rules, August, 1875, Order VI., Rule 1, of the cases to which the 'lower scale' was applicable.

The plaintiff thereupon took out the present summons to review the taxing master's certificate.

Chadwyck Healey for the summons.

Fishbourne for the defendants.

BACON, V.C., said the case raised was one of great importance; for if it was the law that a plaintiff might bring an action for 40*l.* and, at the same time, make all kinds of charges of fraud and misrepresentation against honest men, and, by taking out a certificate of 'lower scale,' escape the full penalty of costs, it would lead to much injustice. The plaintiff's claim had been proved utterly unfounded; and, from the nature of the case and the time occupied in the hearing, the taxing master had exercised a very proper discretion in taxing costs on the higher scale. The summons must be dismissed, with costs.

Chancery Division.
BACON, V.C.
July 6.
} DAVENPORT *v.* KING.

Parties interested to Extent of a Moiety—Sale—Incumbrances—Partition Act, 1868, *s.* 4.

This was the further consideration of a partition action. The chief clerk had found who were the various persons interested, and in what proportions. The incumbrancers on three-fourths of the property desired an immediate sale. Some of the owners of the equity of redemption objected, and argued that incumbrancers were not 'parties interested' entitled to request a sale under the Partition Act, 1868, s. 4.

Marten, Q.C., and *Woodroffe* for the plaintiff.

Millar, Q.C., Langworthy, Willis-Bund, J. G. Wood, and *Upjohn* for the defendants and incumbrancers.

BACON, V.C., considered that incumbrancers were 'parties interested' in the property, and entitled, if interested to the extent of a moiety and upwards, to request a sale; and he made an order for sale accordingly.

Chancery Division.
KAY, J.
June 28.
} MELLOR *v.* THOMPSON.

Practice—Motion for Writ of Attachment for Default in filing Affidavit of Documents—Appeal pending by Party in Default.

This was a motion that a writ of attachment should issue against the defendant for contempt, by reason of his default in not filing an affidavit of documents.

W. F. Robinson, Q.C., and *Abraham* for the motion.

W. Pearson, Q.C., and *Badcock*, for the defendant, stated that an appeal by the defendant was pending against the order directing him to file an affidavit of documents; and asked that the motion should stand over until the appeal had been heard.

KAY, J., however, made an order in terms of the notice of motion; but directed that the order should not be drawn up at all if the appeal succeeded, nor, if the appeal failed, until after the expiration of two days from the hearing of the appeal, and after omission by the defendant to file his affidavit within such two days. If the appeal succeeded, the costs were to be reserved.

Chancery Division. CHITTY, J. July 4. } VINE *v.* RALEIGH.

Settled Estates Act, 1877, *s.* 23—*Trustees—Legal Estate—Petition.*

Where there is for the time being no beneficial owner of an estate entitled to the rents and profits, but the legal estate is vested in trustees, the trustees are the persons to apply by petition in a summary way to exercise the powers conferred by the Settled Estates Act, 1877.

Ince, Q.C., *Macnaghten, Q.C.*, *Warmington, Q.C.*, *Byrne*, and *Jason Smith* appeared for the different parties.

Chancery Division. CHITTY, J. July 9. } *In re* MASON. MASON *v.* MASON.

Practice—Parties—Adding Parties after Judgment and Certificate.

Further consideration.

H. B. Buckley, for the plaintiffs, applied for leave to amend the writ and statement of claim by adding a party to the action after judgment and the issue of the chief clerk's certificate. The party proposed to be added was a trustee and executor who had proved the will of the testator, but had absconded in debt to the estate. An order had been obtained for substituted service. Buckley referred to the unreported case of *Re Stokes, Aikman* v. *Paget*, when an order was made by the Court of Appeal, after Kay, J., had refused to make the order, adding a trustee as defendant after the ordinary administration judgment had been made.

Tremlett, for the defendants, consented.

CHITTY, J., gave leave to amend the writ and statement of claim, and to serve them together.

Chancery Division. PEARSON, J. June 30. } *Re* STONOR'S TRUSTS.

Marriage Settlement—Agreement to settle after-acquired Property—Except Property settled to Wife's separate Use—The Married Women's Property Act, 1882, *s.* 19.

By the marriage settlement, dated November 25, 1862, of Charles C. Welman and Eugenia Mary Welman (then Eugenia Mary Stonor, spinster), it was agreed and declared that, in case any money of the amount of 500*l.* or upwards, at any one time (*except* interests which should be settled and limited to her separate use) should, during their joint lives, by devise or bequest, vest in Eugenia M. Stonor, the same should be forthwith assured to the trustees of the settlement upon the trusts thereby declared.

Sophia Stonor, by her will made in March, 1860, gave all the residue of her personal property to her daughter, Eugenia M. Stonor. She died on January 14, 1883. The clear residue of her personal estate, amounting to about 970*l.*, had been paid into Court.

The Married Women's Property Act, 1882, provides (s. 5) that every woman, married before the commencement of the Act, shall be entitled to hold and dispose of, as her separate property, all personal property her title to which shall accrue after the commencement of the Act; and (s. 19) nothing in this Act contained shall interfere with or affect any settlement made respecting the property of any married woman.

This petition was now presented by Mr. and Mrs. Welman, praying that the fund in Court might be paid to Mrs. Welman upon her separate receipt.

Cozens-Hardy, Q.C., and *Morshead*, for the petitioners, contended that the effect of section 5 of the Married Women's Property Act, 1882, was to give this money to Mrs. Welman, for her separate use, and so take it out of the agreement to settle after-acquired property contained in the settlement.

Rashleigh and *Ward* for the respondents.

PEARSON, J., held that the Act (s. 19) distinctly said that 'nothing in the Act contained'—that is to say, nothing contained in any clause before that section—was to affect any marriage settlement. He must, therefore, omit section 5 in considering the proper bearing of the agreement to settle after-acquired property, and hold that this money was not within the exception.

Chancery Division. PEARSON, J. June 22, 29. July 2. } *In re* VALLANCE'S TRUSTS.

Colonial Will—Appointment of Funds in Court in England—English Probate necessary for Payment out to Appointee.

Petition for payment out of Court.

C. A. V. died in New Zealand in 1882, having by his will exercised a power of appointing to his children certain leaseholds in England, which had been settled by his father's will in trust for himself for life, and then, as he should appoint, among his children. The leaseholds had been taken by a local board of works, and the purchase-money paid into Court.

The will of C. A. V. had been proved in the Supreme Court of New Zealand (Wellington district); and the question arose whether it was necessary for the petitioner, who was the son and appointee of C. A. V., to prove his title by producing an English probate of the will.

S. B. L. Druce for the petitioner.

Rose-Innes and *T. W. Ratcliff* for other parties.

PEARSON, J., held, distinguishing *Re Tootal's Trusts*, 31 W. R. 653, noted *ante* p. 49, that an English probate must be produced.

Chancery Division.
PEARSON, J.
July 3.
Re EARLE.

Vendor and Purchaser—Trust for Sale—Sale by Trustees—No Life Interest—The Settled Land Act, 1882, *s.* 63.

Adjourned summons.

This was an application, under the Vendor and Purchaser Act, 1874, by the trustees of the will of the late Thomas Earle, to determine the question whether they could make a good title under the trust for sale contained in the will without the concurrence of the persons beneficially entitled.

Thomas Earle, by his will dated October 21, 1820, devised the residue of his real estate to trustees upon trust for sale, with power to the trustees to give receipts for the purchase-money; and he directed his trustees to stand possessed of the proceeds of sale after the death of his wife (which event had happened) in trust for his sons and daughters, in certain proportions, the shares of the daughters being settled.

All the children were dead. The trustees had entered into a contract to sell part of the real estate.

Cozens-Hardy, Q.C., and *Phipson Beale*, for the trustees, submitted that where, as here, there was no person entitled to the income of the proceeds of sale 'for his life, or any other limited period,' section 63 of the Settled Land Act, 1882, did not apply; and the concurrence of the beneficiaries in the conveyance was not necessary.

Whitley for the purchaser.

PEARSON, J., held that, under section 63 of the Act, the Court must look only to 'the instrument or instruments' creating the trust for sale; that is, in the present case, to the will of the testator. This was an instrument under which there was now no person interested 'for his life, or any other limited period,' in the income of the proceeds of sale. Under these circumstances, section 63 had no operation; and the trustees could make a good title without obtaining the concurrence of the beneficiaries.

Chancery Division.
DENMAN, J.
July 11.
WOODHOUSE *v.* SPURGEON.

Will—Construction—Power of Appointment—Implied Life Interest.

On the marriage of Mr. and Mrs. J. A. Spurgeon, certain personal property was settled so that (in the event, which happened, of there being no issue of the marriage), Mrs. Spurgeon had a general testamentary power of appointment, and in default of appointment the property was given at her death to such persons as would have been entitled to her personal property, under the Statute of Distributions, if she had not been married and died intestate.

Mrs. Spurgeon died in 1881, having made a will by which she appointed the settled property 'from and after the decease of her husband (but not so as to affect the income thereof during his life) in equal fifth parts into and between' her only brother, and her four out of her five sisters by name. The brother of the testatrix died in her lifetime.

This was an action to administer the trusts of the settlement in order to have the meaning of the will ascertained.

Barber, Q.C., and *Borthwick* for the trustees of the settlement.

Warmington, Q.C., and *Neuman*, for the husband of the testatrix, contended (1) that there was an implied gift of a life interest to him; (2) that the testatrix had taken the property out of the settlement, and made it her own, so that the husband took the life interest and the lapsed share by intestacy.

Higgins, Q.C., and *Christopher James*, for the sister of the testatrix, not named in the will, *contrà*.

DENMAN, J., held that the income during the life of the husband, and the lapsed share given to the brother, went, as in default of appointment, equally among all the five sisters of the testatrix.

Queen's Bench Division.
June 27.
JOLLIFFE *v.* BAKER.

Sale of real Property—Vendor and Purchaser—Accidental Misstatement as to Extent of Property—Completion of Purchase—Right to Compensation.

This was an appeal from the decision of a County Court judge.

The question argued was whether, in the absence of moral fraud, a purchaser could, after completion of a sale and execution of the conveyance of real property, recover damages from the vendor, who had, during the treaty of sale, accidentally made a misstatement as to the acreage of the property.

The County Court judge decided in favour of the plaintiff (the purchaser).

The defendant appealed.

Macaskie for the defendant.

Harris Lea for the plaintiff.

Cur. adv. vult.

The COURT (WILLIAMS, J., CAVE, J., and SMITH, J.) held that, there being no warranty in the conveyance or fraudulent representation on the part of the defendant, no compensation could be recovered by the purchaser.

Judgment for the defendant.

Queen's Bench Division.
July 5.
BRUNSDEN *v.* HUMPHREYS.

Estoppel—'Res judicata'—Action for Negligence—Injury to Carriage—Subsequent Action for personal Injuries.

This was an action tried before GROVE, J., when a verdict was passed for the plaintiff. The action was for damages for personal injuries caused by the defendant's negligence. It appeared that the plaintiff had already brought an action, and secured damages, for an injury sustained to his carriage from the same negligence, in which action, however, no claim had been made in respect of personal injuries. The question argued was, whether the plaintiff was now entitled to bring a second action for damages for personal injuries arising from the same negligence, and in respect of which he might have recovered in the former action.

Crispe (*Waddy, Q.C.*, with him) for the plaintiff.

Murphy, Q.C. (*Hannen* with him) for the defendant.

The COURT (POLLOCK, B., and LOPES, J.) held that, inasmuch as the damages in question were recoverable in the former action, the former action was a bar to the later one.

Judgment for the defendant.

Table of Cases.

HOUSE OF LORDS.

House of Lords. June 8, 11, 12, July 16. } MILDRED GOYENECHE & Co. *v.* MASPONS Y HERMANO.

Foreign Consignor and London Consignee—Principal and Agent—Unnamed Foreign Principal—Goods insured by Consignee—Loss—Rights in Insurance Money.

The defendants appealed from the decision of the Court of Appeal in this case, reported 51 Law J. Rep. Q.B. 604.

Cohen, Q.C., and *Davey, Q.C.* (*Arbuthnot* with them), for the appellants.

Herschell, Q.C. (*Solicitor-General*), and *Barnes* for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD FITZGERALD) dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. COTTON, L.J. BOWEN, L.J. June 30. } *Ex parte* M'HENRY. *In re* M'HENRY.

Liquidation Petition — No Resolutions passed — Delay pending Proceedings—Adjudication—Bankruptcy Act, 1869, s. 125, subs. 12.

On August 15, 1879, M'Henry filed a liquidation petition, and a receiver was afterwards appointed, and proceedings in various actions against the debtor were restrained by injunction.

At the first meeting of the creditors it was resolved to adjourn until December 15, 1879, pending the result of an appeal by the debtor to the Court of Appeal in an action of *Jewitt* v. *M'Henry*. After this several adjournments took place, the last being till March 28, 1883. No resolutions for liquidation or composition were ever passed. The debtor's appeal having been dismissed by the Court of Appeal, he then appealed to the House of Lords, which appeal was now still pending. On March 28, 1883, the adjourned meeting was held, and the creditors resolved that in the interests of the creditors it was inexpedient that any further proceedings should be taken in the liquidation petition.

On May 3 two creditors applied to Mr. Registrar Hazlitt to adjudicate the debtor a bankrupt under section 125, subsection 12, of the Bankruptcy Act, 1869. On the hearing of this application, the debtor offered to pay the two creditors in full; but this was refused by the creditors, who thought it would not be safe to take the money after notice of an act of bankruptcy. The registrar accordingly made the order of adjudication, against which the debtor now appealed.

At the hearing of the appeal, the offer of payment was renewed; but the money was to be paid by a friend of the debtor, and not in any way out of his assets.

Sir H. Giffard, Q.C., E. Clarke, Q.C., and *Finlay Knight* for the debtor.

Charles Russell, Q.C., Winslow, Q.C., and *Sidney Woolf* for the creditors.

Their LORDSHIPS held that, as the receiver had not been discharged, the liquidation proceedings were still pending, notwithstanding the resolutions of March 28, 1883; so that, if the present order were discharged, another application for adjudication could at once be

made by any creditor who felt himself aggrieved. They therefore discharged the order of adjudication, on the debtor undertaking to apply for a fresh first meeting, and on the debts of the two creditors being paid in full by the third party who had made the offer. They also intimated that, if the payment were made either directly or indirectly out of the debtor's assets, it would be a contempt of Court.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
July 9.
} BUTCHER *v.* POOLER.

Practice—Costs directed to be paid out of the Estate—Appeal for Costs.

Appeal from BACON, V.C.

The judgment in the action declared that the partnership formerly subsisting between the late husband of the plaintiff and the defendant, in which they had equal shares, was dissolved, and directing the usual accounts and inquiries.

The certificate of the chief clerk found that the interest of the partnership in certain leasehold wharves was of no certain value, and that the goodwill was of considerably less value than that put on it by the plaintiff. The plaintiff took out a summons to vary the certificate by attributing to the leaseholds and goodwill the value sought to be put upon them by the plaintiff. The summons was refused, and the costs were directed to come out of the estate.

The defendants appealed from this order as to costs.

Horton Smith, Q.C., and *Northmore Lawrence*, for the appellants, contended that there was a distinction between the cases where a party was ordered to pay the costs of the action, in which case the judge had a discretion; and where, as here, the costs were ordered to come out of a particular fund; that the plaintiff having entirely failed in her claim, the defendants were, in fact, made to pay two-thirds of the costs, and that the order was beyond the judge's jurisdiction.

Millar, Q.C., and *P. B. Abraham, contrà.*

Their LORDSHIPS held that the order related to costs within the discretion of the judge, and that no appeal would lie.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
July 10, 13.
} GREER *v.* YOUNG.

Attorneys and Solicitors Act, 1860, *s.* 28—*Charge for Costs—'Property recovered or preserved.'*

The charge which section 28 of the Attorneys and Solicitors Act, 1860, enables the Court to declare a solicitor entitled to for his costs upon the property recovered or preserved, is not confined to the interest of the person who employs the solicitor in that property, unless it is only that interest that is recovered or preserved; but extends to the whole property, recovered or preserved; and the fact that infants are interested in any property recovered or preserved, does not prevent the Court from declaring a charge upon that property; but the infants should be properly represented when the application for such charging order is made.

Whitehorne, Q.C., Underhill, and *Warrington* appeared.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
July 12, 13.
} *Ex parte* BAGSTER.
In re BAGSTER.

Liquidation Petition—Registration of Resolutions—'Locus Standi' of Creditor who has not proved his Debt—Right to appear before Registrar and oppose Registration.

This was an appeal from a decision of Mr. Registrar Murray, sitting as CHIEF JUDGE in Bankruptcy.

R. Bagster, who carried on business as a publisher, filed a liquidation petition in May last, and on May 23 the creditors resolved upon a liquidation by arrangement, and appointed a trustee. On June 5 the resolutions came before the registrar for registration. On this occasion B. B. Bagster, who claimed to be a creditor, appeared before the registrar in order to oppose the registration. He had not proved his debt, either at the meeting of creditors or by sending a proof to the trustee; but he tendered to the registrar an affidavit of proof, and claimed the right then and there to prove his debt, and to be heard in opposition to the registration.

The Registrar held that, as the creditor had not already proved his debt, he had no *locus standi* to be heard, and he proceeded to register the resolutions.

The creditor appealed.

Finlay Knight for the appellant.

Seward Brice for the debtor.

Their LORDSHIPS held that the registrar had no authority to allow a debt to be proved when he was sitting to hear an application to register resolutions, and that a creditor who had not previously proved his debt had no *locus standi* to be heard before the registrar.

The appeal was accordingly dismissed.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
July 11.
} SPELLER *v.* SEDGWICK.

Voluntary Settlement—Property to which Wife entitled for separate Use—Subsequent Mortgage—27 Eliz. c. 4.

By a postnuptial settlement dated August 29, 1877, and made between A. Sedgwick of the first part, Emily Sedgwick, his wife, of the second part, and trustees of the third part, certain real and leasehold estates, to which Mrs. Sedgwick was entitled for her separate use, were granted and demised (at a nominal rent) to the trustees on trust in favour of the wife and husband for their lives, and subject thereto in favour of the issue of the marriage. Afterwards, on April 8, 1879, Mr. and Mrs. Sedgwick mortgaged the property to Crossfield without disclosing the settlement. The trustees, having discovered the fact of the mortgage, now brought this action for administration of the trusts of the settlement. Crossfield counter-claimed for a declaration that the

settlement was fraudulent and void as against his mortgage. There was no issue of the marriage. Mr. and Mrs. Sedgwick admitted that they had mortgaged the property under the impression that the settlement was voluntary.

Millar, Q.C., and *E. B. Mitchell*, for the trustees, supported the settlement in favour of unborn issue.

C. H. Turner, for Mr. and Mrs. Sedgwick, did not contest the case.

Marten, Q.C., and *J. Beaumont*, for Crossfield, contended that the settlement was void under 27 Eliz. c. 4.

Millar replied.

BACON, V.C., said the case was not similar to those in which it was held a sufficient consideration that husband and wife each gave up some advantage. In this case the property was the wife's absolutely, and she could have disposed of it at the date of the settlement without the husband's concurrence; it was therefore a voluntary settlement, and a declaration must be made that the subsequent mortgage was valid against the settlement.

Chancery Division. KAY, J. June 20, July 13. } *In re* CRESSWELL. PARKIN *v.* CRESSWELL.

Will—Construction—Contingent Gift—Transmissibility of Interest—Heirlooms.

The testator, Daniel Cresswell, who died in 1844, by his will, dated April 24, 1839, directed that all his books and plate, from and immediately after the decease of his wife, should be considered as heirlooms, and should pass with his real estate in the county of Derby, in the same manner as if they were an estate of inheritance at common law, and should so continue annexed to his said real estate as long as the law would permit, to be inherited by the several persons who should succeed to his said real estate; and he gave and devised all his real and residuary personal estate to trustees upon trust for his wife during life or widowhood, and after her decease or second marriage upon trust for R. C. for life, and after his decease for his first and other sons successively in tail male, and in default of such issue upon trust for H. C., eldest son of J. C., for life, with a like remainder to his sons, with remainder 'upon trust for the next eldest son of J. C. who shall survive the said H. C.' for life, and after his decease 'upon trust for the first and other sons of the body of the said next eldest son of the said J. C. who shall survive the said H. C.' successively in tail male, with remainder upon trust for the testator's own right heirs for ever. J. C. died in 1842, in the testator's lifetime. The widow married again in 1851. R. C. died in 1863 without having married. H. C. died in 1874 without having married. G. C. was the next eldest son of J. C. who survived H. C., and he died in 1879. The eldest son of G. C., who had thus become the first tenant in tail, died without issue in the lifetime of H. C. The question was, whether the contingent interest of the eldest son of G. C. in the personal estate and in the heirlooms was transmissible, notwithstanding his death in the lifetime of his father, and before it was ascertained whether or not the life estate of his father would take effect, and that H. C. would die without having had issue male; or, whether, in order that the eldest son of G. C. might take a transmissible interest in the personal estate and in the heirlooms, it was necessary that the eldest son of G. C. as well as G. C. himself should survive H. C.

Graham Hastings, Q.C., and *Elgood, Kekewich, Q.C.*, and *Northmore Lawrence, Rigby, Q.C.*, and *A. Bailey*, and *Method, Ingle Joyce*, and *Lambert* appeared.

KAY, J., said that, so far as he could discover, the only case in which a future contingent interest was not transmissible was where being in existence at the time when the contingency happens is an essential part of the description of the person to take. That was not so here; and he therefore held that the contingent interest of the eldest son of G. C. in the personal estate and in the heirlooms was transmissible and passed to his legal personal representative.

Chancery Division. KAY, J. July 16. } MILES *v.* JARVIS.

Will—Construction—Contingent Remainder or executor Devise—Gift to Children living at Death of Tenant for Life or 'thereafter to be born.'

A testator, who died in 1860, devised certain hereditaments to his wife for life, and from and after her decease unto 'all and every the children of his son living at the time of the decease of his (the testator's) said wife or thereafter to be born' equally as tenants in common. There were ten children of the son, six born before the death of the testator's widow and four after. The question was whether the after-born children were entitled to share. In *Brackenbury* v. *Gibbons*, Law J. Rep. 2 Chanc. Div. 417, where the terms of the gift were similar, Hall, V.C., held that the gift was a contingent remainder, and that after-born children were excluded; but this case was disapproved of by Jessel, M.R., in *Re Lechmere and Lloyd*, Law J. Rep. 18 Chanc. Div. 524, where a contrary conclusion was arrived at.

Oswald, Langworthy, and *Langley* appeared.

KAY, J. held, following *Re Lechmere and Lloyd*, that the rule that a gift capable of being construed as a contingent remainder should not be construed as an executory devise did not apply here, because the gift could not be construed as a contingent remainder without excluding members of the designated class, consisting, as it did, of the children of the son whether born before or after the death of the widow; that the gift was therefore an executory devise, and that the after-born children were entitled to share.

Chancery Division. CHITTY, J. July 7. } *In re* THE DUKE OF RUTLAND'S SETTLEMENT.

Settlement—Sale by Tenant for Life—Capital Money—Lands Clauses Consolidation Act, 1845, *ss. 7 and 69—Settled Land Act*, 1882, *ss. 22 and 32.*

The Court has jurisdiction under the Settled Land Act, 1882, ss. 22 and 32, to order money paid in upon a sale of land under the Lands Clauses Consolidation Act, 1845, s. 7, by the tenant for life, to be paid out, with the consent of the tenant for life, to the trustees of the settlement.

Bromehead and *G. E. Jeffrey* for the parties.

Chancery Division.
CHITTY, J.
July 16.

Re ILLIDGE.
DAVIDSON *v.* ILLIDGE.

Real Estate—Debts—3 & 4 Wm. IV. c. 27—Heir-at-Law or Devisee—Retainer.

Where real estate has been sold and under 3 & 4 Wm. IV. c. 27 has become assets for the payment of debts, the heir-at-law or devisee, who is a creditor of the intestate or testator, has a right of retainer for his debt.

Crossley, Q.C., and *N. Lawrence* for the plaintiffs.
Romer, Q.C., and *E. Cutler* for defendants.
Warrington for trustees.

Chancery Division.
PEARSON, J.
July 7.

Re ADAMS.

Vendor and Purchaser—Lease—Option to purchase—Conveyance to Administrator of Lessee—Precatory Trust.

This was a summons by the vestry of St. Mary Abbot's, Kensington, who had recently entered into a contract to purchase a piece of land from Charles Adams, for a declaration that the vendor could not make a good title to the land, without (1) the concurrence of the persons interested in the personal estate of Ralph Adams deceased, and (2) the concurrence of the children of George Smith, deceased.

By a lease dated September 30, 1819, the land was demised by George Smith to Ralph Adams for sixty years from June 24, 1819, with a special covenant giving him, his executors, administrators, or assigns an option at any time to purchase the fee on payment of 1,200*l.*

In January, 1858, Ralph Adams died intestate, leaving several children.

In August, 1876, letters of administration to the estate of Ralph Adams were granted to his son Charles Adams, who was then his heir-at-law.

In February, 1861, George Smith died, having, by his will, devised and bequeathed all his real and personal estate to his wife, Harriet Smith, 'in full confidence that she would do what was right as to the disposal thereof between his children either in her lifetime or by will.'

By an indenture, dated July 6, 1877, which recited, amongst other things, that Charles Adams, as the heir-at-law and legal representative of Ralph Adams, was the person then entitled to exercise the option to purchase contained in the lease, in consideration of 1,200*l.* then paid by Charles Adams, Harriet Smith conveyed the piece of land to him in fee.

Smart for the summons.

Pownall for the vendor.

PEARSON, J., said he should assume, for the purpose of his decision, that the option to purchase given by the lease was invalid, without expressing any opinion as to its validity. Here Mrs. Smith had treated it as valid, and had conveyed the fee to Charles Adams, who took it as administrator of Ralph Adams. He could not, therefore, hold it for his own benefit; and, consequently, the concurrence of the other persons interested in the personal estate of Ralph Adams was necessary to make a good title. As to the other point, the current of the modern authorities, especially the case of *Lambe* v. *Eames*, 40 Law J. Rep. Chanc. 447; L. R. 6 Chanc. App. 597, was against holding that such words as occurred in the will of George Smith created a trust for the children. The second objection must, therefore, be overruled.

Chancery Division.
NORTH, J.
July 11.

In re MORGAN'S SETTLED ESTATE.

Settled Land Act, 1882, *ss.* 2 (5), (6), (7), (10) (i); 58 (1) (ii), (vi), (ix); 59, 60—*Tenant for Life—Person having Powers of Tenant for Life.*

A testator, by his will, devised real estate to his wife and another, as trustees upon trust, to pay the rents and income to his wife, for the maintenance, education, and benefit of his son until he should attain twenty-one, and without being liable to account to his trustees or his son for the same; and, upon his attaining that age, then, upon trust, for him absolutely; but, if he should die under twenty-one, without leaving issue, then, upon trust, to permit his wife to receive such rents and income for her own benefit during her life, if she should so long remain his widow; and from and after her death or second marriage, then, upon trust, to his grandchildren at twenty-one. The will contained a power for the trustees to sell the property for ground rents or fee-farm rents. The trustees being desirous of selling a part of the estate for a lump sum in exercise of the powers of the Settled Land Act, 1882, a summons was taken out under the Act in the name of the infant.

Cozens-Hardy, Q.C., and *R. F. Norton* for the summons.

Bousfield for the trustees.

NORTH, J., held that the infant was a person having the powers of a tenant for life under section 58 (1) (ii); and appointed the trustees of the will to be trustees under the Act, so that they could sell on his behalf. 'In possession,' in the above section, is intended to contrast with 'in reversion' or 'in remainder,' and not as referring to the actual occupation of the land, or receipt of the rents and profits.

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COURT OF APPEAL.

HIGH COURT OF JUSTICE.

HOUSE OF LORDS.

House of Lords. June 19. July 23. } ROBERTSON AND WIFE *v.* BROADBENT.

Will—Construction—Gift of personal Estate—Legacy, whether specific or residuary.

This was an appeal from a decision of the Court of Appeal, which reversed one of FRY, J.

The case is reported below, 51 Law J. Rep. Chanc. 665.

M'Naghten, Q.C., and *Sturges* for the appellants.

Fischer, Q.C., and *Stirling* for the respondent legatees.

Sir H. James (*Attorney-General*) and *Cecil Russell* for the Attorney-General.

Borthwick for the executors.

Cur. adv. vult.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) affirmed the judgment of the Court of Appeal, with costs.

House of Lords. July 20, 23. } MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY *v.* BROWN.

Railway Company—Rates for Carriage of Goods—Unreasonable Condition—Alternative Rate—Railway and Canal Traffic Act, 1854, *s.* 7.

The company appealed from the decision of the Court of Appeal in this case, which reversed one of the Queen's Bench Division. The case is reported below, 51 Law J. Rep. Q.B. 599; 52 *ibid.* 32.

The Solicitor-General (*Sir F. Herschell*) and *C. A. Russell* (*Gully, Q.C.*, with them) for the appellants.

Webster, Q.C., and *Bray* for the respondent.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, LORD BRAMWELL, and LORD FITZGERALD) reversed the decision of the Court of Appeal, and restored that of the Queen's Bench Division.

COURT OF APPEAL.

Court of Appeal. BRETT, M.R. COTTON, L.J. BOWEN, L.J. July 16. } REGINA *v.* THE JUSTICES OF THE CITY OF LIVERPOOL.

Licensed Premises—Neglect of Occupier to apply for Renewal License—Application by new Tenant for License after Efflux of current License—Jurisdiction of Justices—9 Geo. IV. c. 61, *s.* 14.

This was an appeal from a Divisional Court which raised the question whether justices have jurisdiction to grant a renewal license under 9 Geo. IV. c. 61, s. 14, to a new tenant or occupier of the licensed premises after the current license has expired, in cases where the tenant or occupier has removed from the premises without making the usual application for a renewal.

The Divisional Court followed the decision in *Ex parte*

Todd, 47 Law J. Rep. M.C. 89; L. R. 3 Q.B. Div. 407, where it was laid down that all applications under the section in question for a renewal license must be made before the expiration of the current license.

The Solicitor-General (*Sir F. Herschell*) and *Bremner*, for the appellant, the new tenant, contended that, although the jurisdiction of the justices was in certain cases under the section expressly restricted to renewal applications made before the expiration of the existing license, no such restriction was imposed by the section in the present case, and could not be imported without express words or necessary implication; and, therefore, that the decision in *Ex parte Todd* (*supra*) went too far.

Aspinall, *Q.C.*, and *Pickford*, for the justices, submitted that *Ex parte Todd* (*supra*) was rightly decided.

Their LORDSHIPS were of opinion that the construction put on section 14 in *Ex parte Todd* (*supra*) was erroneous. In the present case the Act did not impose any limit of time, either expressly or by necessary implication, to the application for a renewal license; and, therefore, such a restriction could not be imported by the Court. Therefore the justices had jurisdiction to entertain the appellant's application, although made after the expiration of the current license, and the decision of the Divisional Court, which necessarily followed *Ex parte Todd* (*supra*), must be reversed.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
July 17.
} MACLEOD *v.* JONES.

Solicitor Mortgagee—Threatened Exercise of Power of Sale—Disputed Accounts—Injunction.

The general rule that a mortgagee will not, at the suit of the mortgagor, be restrained from exercising his power of sale unless the mortgagor pays into Court the amount which the mortgagee swears to be due to him on his security, does not apply where the relation of solicitor and client has existed between the mortgagee and mortgagor down to the time of or shortly before the threatened sale. In such a case the Court will, as a general rule, restrain the sale without payment into Court until the usual accounts have been taken; but, if the security is hazardous, the Court will have regard to all the circumstances of the case, and will, pending the taking of the accounts, order such a sum to be paid into Court as will in its opinion make the mortgagee safe.

Decision of NORTH, J., reversed.

W. W. Karslake, *Q.C.*, and *Medd* for the appellant, the mortgagor.

Everitt, *Q.C.*, and *C. C. Tucker* for the respondent, the mortgagee.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
July 19.
} SEEAR *v.* WEBB.

Practice—Judgment in Default of Appearance—Subject to Production of Affidavit of Service—Time within which Production must be made.

Motion.

This was an action for redemption in which, on Friday, July 13, judgment was obtained dismissing the action for want of prosecution. The plaintiff did not appear, and judgment was given subject to the production of the usual affidavit of service of notice of motion. This affidavit, however, was not filed or produced to the registrar till the Monday following.

On July 18, *C. H. Turner*, for the plaintiff, on these facts obtained an *ex parte* order staying proceedings under the judgment.

July 19.—*Marten*, *Q.C.*, and *Latham*, for the defendant, now moved on short notice by leave to discharge the *ex parte* order.

C. H. Turner, for the plaintiff, contended that, according to the old practice under Consolidated Order XVIII., Rule 5 (see *Lord Miltown* v. *Stewart*, 8 Sim. 34), which was still in force, the affidavit of service ought to be filed at latest before the rising of the Court on the same day on which judgment was obtained.

BACON, V.C., being of opinion that it was clearly established that the plaintiff in fact had due notice of the motion to dismiss, held that the production of the affidavit to the registrar on the Monday was sufficient, and discharged the *ex parte* order.

Chancery Division.
KAY, J.
July 3, 13.
} *In re* COCKROFT. BROADBENT *v.* GROVES.

Will—Administration—Locke King's Acts—17 & 18 *Vict. c.* 113; 30 & 31 *Vict. c.* 69; 40 & 41 *Vict. c.* 34—*Conversion—Real Estate purchased by Testator.*

A testator, having in his lifetime contracted to purchase certain real estate, by his will, dated in 1881 (after Locke King's Acts), devised it specifically to his daughter M. J. Groves for life, with remainder to her children. His personal estate was not disposed of, so that it devolved upon his next-of-kin; but he did not, in his will, either expressly or impliedly, intimate any intention that the unpaid purchase-money should be paid out of his personal estate. He died without having completed the purchase or paid all the purchase-money. After the testator's death, a compromise (resulting in the rescission of the contract) was come to between the vendor of the property and the executor and trustee of the will (against whom the vendor had brought an action for specific performance of the testator's contract); and such compromise was confirmed by an order made in this action in the presence of the tenant for life of the real estate, and of the trustees who represented the interests of the infant children.

The devisees claimed to be entitled to so much of the personal estate as represented the purchase-money of the land contracted to be bought, on the ground that there was a conversion, and that the provisions of Locke King's Acts did not apply.

Warrington for the plaintiffs.

Melville for the devisees of the real estate.

Decimus Sturges for the widow.

KAY, J., said that, this being a case of vendor's lien, Locke King's Acts applied. All that the devisees could have been entitled to was the purchased property, charged with the unpaid purchase-money; and all that they had lost was such value as the land might have beyond that sum. If their claim could be maintained, it would also be maintainable if there had been no rescission of the contract, which would be directly contrary

to the spirit and letter of the Acts in question. He held, moreover, that, if the claim were otherwise good, the compromise was fatal to it.

Chancery Division. Kay, J. July 19. } WHEELWRIGHT *v.* WALKER.

Settled Land Act, 1882, *s.* 4, *subs.* 1, *s.* 53—*Sale by Tenant for Life—Injunction to restrain Sale at less Price than Sum offered by Plaintiff—Form of Order.*

In this case (noted *ante* pp. 21, 27, 76), the plaintiff, the purchaser of the reversion in fee of settled property, had offered the defendant, the tenant for life, the sum of 7,500*l.* (a substantial price) for the purchase of the absolute fee simple; but the defendant was unwilling to sell to the plaintiff, and it was apprehended that he would proceed to sell to some other person for a less price. The plaintiff applied to the Court for an injunction to restrain him from so doing upon the ground that, under section 4, subsection 1, and section 53 of the Settled Lands Act, 1882 (45 & 46 Vict. c. 38), a tenant for life was bound, in the interests of all parties, to sell at the best price that can reasonably be obtained.

Graham Hastings, Q.C., and *Rawlins* for the plaintiff.

W. Pearson, Q.C., and *Byrne* for the defendant.

KAY, J., made an order that, upon the plaintiff undertaking not to withdraw his offer of 7,500*l.* for the property, the defendant should not enter into any contract (otherwise than by public auction) for sale of the property for less than 7,500*l.*, nor enter into any contract (otherwise than by public auction) for sale of the property, or any part of it, without first communicating the offer to the plaintiff, and giving him two clear days to make an advance on the price offered.

Chancery Division. Kay, J. July 23. } *In re* AUDROS. AUDROS *v.* AUDROS.

Will—Bequest to Great-nephews, Sons of Testator's Nephew—Children of Foreigners legitimated by subsequent Marriage of Parents.

A testator bequeathed personal estate to 'his great-nephews, sons of his deceased nephew, T. G. A.' T. G. A. was a native of Guernsey. The plaintiff was the son of T. G. A., born before the marriage of his parents, who were domiciled in Guernsey at the time of his birth and of their marriage. By the law of Guernsey, children are legitimated by the subsequent marriage of their parents. The question was whether the plaintiff was entitled to share along with his brothers and sisters born after the marriage of his parents.

Graham Hastings, Q.C., and *Bardswell* for the plaintiff.

Hatfield Green for the defendants, the executor of the will, and the children born after the marriage.

KAY, J., held that a bequest of personalty in an English will to the children of a foreigner means to his legitimate children; that by international law, as recognised in this country, those children are legitimate whose legitimacy is fixed by the law of the father's domicile; and that, as the plaintiff's father was domiciled in Guernsey at the plaintiff's birth, and afterwards married his mother, so as to make him legitimate, by the law of Guernsey he was entitled to share.

Chancery Division. Denman, J. July 20, 21. } *Re* ARMITAGE. SMITH *v.* ARMITAGE.

Practice—Trial—Order XXXVI., Rule 6—Administration—Executor—Misconduct.

This was the trial of an administration action brought by beneficiaries against executors. Misconduct was alleged, and special relief claimed.

Barber, Q.C., and *J. Beaumont*, for the plaintiffs, asked that the ordinary administration judgment only might be made, and the question of the plaintiffs' right to special relief reserved.

Warmington, Q.C., *Higgins, Q.C.*, and *Beddall* for the defendants.

DENMAN, J., made the ordinary decree; but dismissed the action so far as it sought special relief, with costs.

Chancery Division. Denman, J. July 9, 10, 22. } TONE *v.* PRESTON.

Prescription—Right of Support.

This was an action to restrain the defendant from interfering with a wall on his own property, so as to endanger certain sheds and buildings resting on it, for which the plaintiffs claimed a right of support. The plaintiffs were the trustees of the will of a Mr. Tone, a builder, by whom the buildings had been put up more than twenty years. They were at the rear of premises which had been conveyed to Mr. Tone; between the land conveyed to Mr. Tone and the defendant's property a strip was retained by the grantors, on which Mr. Tone covenanted to make a road. The road was never made, and the site was conveyed to Mr. Tone within twenty years from the acts of the defendant complained of.

Barber, Q.C., and *Byrne* for the plaintiffs.

Higgins, Q.C., and *Sir A. Watson* for the defendant.

DENMAN, J., gave judgment for the defendant.

Chancery Division. Denman, J. July 17, 18, 19, 23. } CLEATHER *v.* TWISDEN.

Partnership—Solicitor—Negotiable Securities—Books—Notice.

This was an action to make a solicitor liable for the value of certain bonds payable to bearer, which had been entrusted for safe custody to his partner, and who had appropriated them to his own purposes.

Barber, Q.C., and *Clare* for the plaintiff.

Rigby, Q.C., and *Rawlins* for the defendant.

DENMAN, J., held, that, though the keeping of such securities was not the business of a solicitor, the defendant had constructive notice of the existence of the transaction, as a partnership transaction, by reason of certain passages in copies of letters, and entries in the partnership books, and was liable.

Chancery Division.
NORTH, J.
July 16.
} CHARLTON *v.* CHARLTON.

Solicitor—Extent of Charge for Costs—'Property recovered or preserved'—23 & 24 *Vict. c.* 129, *s.* 28.

Petition.

Under section 28 of the Act 23 & 24 Vict. c. 127, the Court can declare a solicitor entitled to a charge for costs on the whole of the property recovered or preserved in an action by means of his exertions, and not merely on his own client's interest in that property.

Cookson, Q.C., and *Seward Brice* for the petition.

Glasse, Q.C., and *A. Terrell*; *Everitt, Q.C.*, and *A. Terrell*; and *Cozens-Hardy, Q.C.*, and *Northmore Lawrence* for the parties.

Berrie v. *Howitt*, 39 Law J. Rep. Chanc. 119; L. R. 9 Eq. 1, not followed.

Chancery Division.
NORTH, J.
July 23.
} *Re* WILSON. PARKER *v.* WINDER.

Will—Construction—'According to the Stocks.'

Thomas Wilson, by his will, dated July 19, 1845, devised and bequeathed his real and residuary personal estate to trustees upon trust, to sell, convert, and invest as therein mentioned, and to hold 'the aggregate fund' upon certain trusts for his child or children; but if no child (which event happened), upon trust to pay the annual produce thereof to his wife during her life; and, subject thereto, the aggregate fund was to be held in trust for such of his cousins, the children of his late four aunts and two uncles (naming them) living at the failure of the preceding trusts in favour of his child or children, or the determination of the life interest thereinbefore given to his wife in the said fund (which should last happen), and such issue then living, if any, of his said cousins then dead as either before or after the failure of such trusts, or the determination of such life interest (which should last happen), should attain the age of twenty-one years, or should die under the age of twenty-one years leaving issue living at his, her, or their decease, to take, if more than one in a course of distribution, according to the stocks and not to the number of individuals.

The testator died, without issue, in the year 1848. His widow died in May, 1880.

At her death there were living J. H. Winder, the only surviving child of one of the uncles; and also children or other issue of fifteen deceased cousins (children of the other uncle and the four aunts named in the will).

The action was brought to administer the trusts of the will; and the question now arose, on further consideration, whether the property was divisible in sixths or in sixteenths.

Everitt, Q.C., and *H. Humphreys* for the plaintiff.

Badcock for persons claiming a division in sixths.

E. Thurstan Holland, Bethell, and *Ratcliff* for persons claiming a division in sixteenths.

NORTH, J., held, following the decision of Lord Westbury in *Robinson* v. *Shepherd*, 4 De Gex J. & S. 129, that the words 'according to the stocks' were applicable to the descendants of the sixteen cousins, and not to the cousins themselves; and that the fund was divisible into sixteenths.

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Court of Appeal.
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Ex parte HELDER.
In re LEWIS.

Bankruptcy—Sale of Debtor's Property—Application of Purchase-money—Fraudulent Transfer—Act of Bankruptcy—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 6, *subs.* 2.

The debtor, who carried on business as a draper in 1882, was indebted to his father and uncle for money advanced to him, for which the father held the lease of his premises as security. In July, 1882, the father and uncle brought actions against the debtor for the debts owing to them, Helder, Roberts, & Co. acting as their solicitors. The debtor consulted Roberts (a member of the firm), and by his advice suffered judgment by default, execution being delayed in order that the lease and business might be sold to pay the debts which were owing to the father and uncle. The sale was carried out by Helder, Roberts, & Co., and Roberts received the purchase-money, and by the debtor's directions paid the whole of it away to the father, the uncle, and a brother of the debtor, who had been in his employment, and to whom arrears of salary were due, nothing being left for his other creditors. Shortly afterwards the debtor was adjudicated a bankrupt, and the trustee sought to set aside the payments as being void against him. Before Roberts made the payments he had become aware that the debtor was insolvent, and that the proceeds of the sale were substantially the whole of his property. The registrar held that Roberts was acting as agent for the father and uncle as well as for the bankrupt, and that the receipt of the money by Roberts from the purchaser was a fraudulent transfer of the bankrupt's property, and an act of bankruptcy within subsection 2 of section 6 of the Bankruptcy Act, 1869, and he accordingly ordered Helder & Co. to repay the amount received by Roberts to the trustee. Helder & Co. appealed.

Cooper Willis, Q.C., and *F. Cooper Willis* for the appellants.

Winslow, Q.C., and *J. Brooke Little* for the trustee.

Their LORDSHIPS held that Roberts received the money as agent for the debtor only, and that such receipt could not be a transfer of the debtor's property to any one else, and was not, therefore, an act of bankruptcy. They were also of opinion that although the solicitor might have known that the making of the payments would be an act of bankruptcy on the part of his principal, yet he was bound to obey the directions of his principal, and could not, therefore, be called upon to repay to the trustee the money which he had paid away in pursuance of such directions.

Court of Appeal.
BRETT, M.R.
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July 4, 30.

HAIGH AND OTHERS *v.* THE ROYAL MAIL STEAM PACKET COMPANY (LIMITED).

Carriers—Liability of—Ship—Tort—Injury and Death caused by Collision at Sea—Meaning of Words 'Loss or Damage'—Passenger's Ticket.

Appeal from Queen's Bench Division overruling demurrer to statement of defence.

The case is reported 52 Law J. Rep. Q.B. 395.

A. T. Lawrence (with him, *Cohen, Q.C.*) for the plaintiffs.

C. Russell, Q.C., and *Phillimore* for the defendants.

Their LORDSHIPS dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
July 30.

Re KNIGHT. KNIGHT *v.* GARDNER.

Practice—Affidavit Evidence—Notice to cross-examine—Production of Witness—Costs of Production before special Commissioner—Chancery Rules, Order V., February, 1861, Rule 19—Rules of Court, Order XXXVIII., Rule 4.

The only question raised by this summons was whether the costs of producing before a special examiner for cross-examination certain witnesses who had made affidavits in support of the claim of an heir-at-law, should in the first instance be borne by the person producing or the person requiring production. The heir-at-law's claim was made in answer to advertisements in the administration action of *Knight* v. *Gardner*.

Methold, for the heir-at-law who had taken out the summons, submitted that, according to *Peat* v. *Latchford* (Chitty, J., in chambers, May 25, 1883), Order XXXVII., Rule 4, only applied to the trial of an action, and that, consequently, the old practice under Chancery Rules, Order V., February, 1861, Rule 4, still prevailed, and that he was entitled in the first instance to the costs of producing these witnesses from the persons requiring their production.

Marten, Q.C., contrà, was not called on.

BACON, V.C., considered that Order XXXVIII., Rule 4, applied to all proceedings, whether at the trial of the action or elsewhere; that, consequently, the person producing the witnesses was not entitled to demand the expenses thereof in the first instance from the person requiring such production.

Chancery Division.
BACON, V.C.
July 31.

Re BECK'S SETTLED ESTATES.

Solicitor's Remuneration—Sale by Tenant for Life—Auction—Private Contract—Mortgagees—General Order under Solicitors' Remuneration Act, 1881 (44 & 45 *Vict. c.* 44), *Order IV., Rule* 2—*Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 53.

A tenant for life, under the powers of the Settled Land Act, 1882, put up settled property for sale by auction at a reserve price at which no sale was effected; but, on the same day, the estate was sold by private contract for 37,500*l.* The tenant for life had mortgaged his life interest, and the mortgagees employed separate solicitors. This was an adjourned summons by the trustees, asking that they might be at liberty, out of the proceeds of sale, to pay the solicitors of the tenant for life commission for conducting the sale of the estate by public auction, including the conditions of sale, and also commission for deducing the title thereto, and perusing and completing the conveyance thereof, according to the scale set out in part 1 of schedule 1 of the General Order under the Solicitors' Remuneration Act, 1881, and also to pay to the solicitors of the mortgagees of the tenant for life their proper charges in connection with the said sale.

Wolstenholme for the summons.

Shebbeare (with him *Hemming, Q.C.*) for the tenant for life.

BACON, V.C., allowed the proposed payments; observing, as to the costs of the mortgagees, that the tenant for life was entitled to these, since, by virtue of section 53, he was in the position of a trustee. His lordship also held that the summons was right in excluding an additional commission for negotiating the sale by private contract (see Rule 2), since the attempted sale by auction and the actual sale by contract were, in this case, really one transaction. The auctioneer's charges would, according to Order IV., be allowed in addition to the remuneration prescribed by schedule 1.

Chancery Division.
KAY, J.
July 25.

In re BOWN. O'HALLORAN *v.* KING.

Married Woman—Separate Use—Fund producing no Income—Restraint on Anticipation.

A testatrix, by her will, in 1875, gave all her real and personal estate to trustees upon trust for sale and conversion; and, after payment of debts, to raise thereout 4,500*l.* and invest the same, and hold the investments and the income thereof upon trust for R. B. for life; and declared that, after the death of R. B., the trustees should stand possessed of three several sums of 1,000*l.* each, part of the 4,500*l.*, in favour of certain persons therein mentioned; and as to the remaining 1,500*l.*, in trust for and to pay the same to B. O'Halloran for her sole and separate use; and declared that the interest which any female might take under her will should be for her sole and separate use, 'and without power to anticipate the same, and for which her receipt alone shall be a sufficient discharge.'

The testatrix died in 1881, and R. B. in 1882, before the 4,500*l.* had been raised.

The trustees invested the 1,500*l.*; and the question was whether B. O'Halloran, who was a married woman, was entitled to have the capital paid to her, or only the income.

Seward Brice, for the plaintiff, contended that the gift was a gift to the married woman of a sum of money and not of an income-bearing fund; and that, therefore, the Court would order the capital to be paid to her, notwithstanding the restraint on anticipation, though it would have been otherwise if the gift had been of an in-

come-bearing fund, or the restriction had been not merely on anticipation but on alienation.

P. S. Gregory, for the defendant, was not heard.

KAY, J., held that the trustees would only be justified in paying the income to the married woman during her coverture.

Chancery Division. KAY, J. July 26. } GARD *v.* THE COMMISSIONERS OF SEWERS FOR THE CITY OF LONDON.

City of London—Commissioners of Sewers—Powers of, to take the Whole of a House when Part only required for Street Improvement—57 Geo. III. c. xxix. s. 80.

By 57 Geo. III. c. xxix. s. 80 if any houses, walls, buildings, tenements, or hereditaments, or any part thereof, shall be adjudged by the Commissioners of Sewers for the city of London to project into, obstruct, or prevent them from altering, widening, or extending any street, and 'that the possession, occupation, and purchase of such houses, walls, &c. will be necessary for that purpose,' the commissioners are empowered to purchase such houses, &c. Two houses projected, to the extent of 5 feet 6 inches, into a street which the commissioners desired to widen. The commissioners did not intend to use more than 5 feet 6 inches for the purpose of widening the street, but they nevertheless, in terms of the Act, finally adjudicated that the whole of the houses projected, &c., and that the possession, &c., of them was necessary, their intention being to sell the rest of the houses to a purchaser. They accordingly gave the usual notice to treat to the owners of the houses, who, however, objected to sell more than the portion actually required, and brought this action for an injunction to restrain the commissioners from proceeding under the notice to treat.

Rigby, Q.C., and *Theobald* for the plaintiff.

Graham Hastings, Q.C., and *E. Henderson* for the defendants.

KAY, J., held that the commissioners in exercising their powers were bound *bonâ fide* to adjudicate: First, whether or not the whole of any house which they desired to take, or part of it, projected, &c.; and, secondly, whether the possession, occupation, and purchase of the whole or part of it would be necessary, &c.; and that they were not at liberty to make an adjudication extending to the whole of a house, when they, in fact, intended only to use a part of it for the street improvements, and to sell the rest in order to raise money. He accordingly declared the adjudication to be wrong and *ultra vires*, and granted an injunction.

Chancery Division. KAY, J. July 23, 28. } HANKEY *v.* MARTIN.

Estate Tail—Grant by Tenant in Tail in Remainder—Base Fee—Bankruptcy of Tenant in Tail and subsequent disentailing Deed by him—6 Geo. IV. c. 16, *ss.* 64, 65—*Fines and Recoveries Act* (3 *&* 4 *Wm. IV. c.* 74) *ss.* 38, 55, 62.

By deed, in 1841, a tenant in tail of settled property in remainder after an existing life estate, mortgaged his interest in the property to D. In 1842 the tenant in tail became bankrupt. At the date of this bankruptcy, the statute of bankrupts in force was 6 Geo. IV. c. 16, as amended by the Fines and Recoveries Act. No disentailing deed was executed by the commissioners in bankruptcy pursuant to section 64 of 6 Geo. IV. c. 16; but, in 1872, the tenant in tail executed a disentailing deed. The tenant for life died in 1878. The plaintiff, a sub-mortgagee from D., brought this action to realise his security.

W. Pearson, Q.C., W. F. Robinson, Q.C., Rigby, Q.C., Yate Lee, Stirling, and *Alexander* appeared.

KAY, J., held that the mortgage by the tenant in tail in remainder created not merely an estate for the life of the grantor, but a base fee voidable by the entry of the issue in tail; that, notwithstanding the intervening bankruptcy, the subsequent disentailing deed by the tenant in tail operated to confirm the base fee, and that, therefore, the plaintiff was entitled under his security to a base fee to continue so long as there should be issue of the tenant in tail who would have succeeded under the entail.

Chancery Division. KAY, J. July 30. } *In re* EYRE. EYRE *v.* EYRE.

Power of Appointment—Power coupled with a Duty—Release by Donees—Conveyancing Act, 1881 (44 *&* 45 *Vict. c* 41), *s.* 52.

The testator, by his will dated August 11, 1880, after giving specific legacies to one of the two defendants and to the wife of the other of them, devised and bequeathed his residuary real and personal estate to the defendants, the Most Reverend Charles Eyre and Lord Arundell of Wardour, upon trust for sale and conversion, and directed that his trustees should hold one moiety 'in trust for such persons in such shares and generally in such manner' as the defendants should appoint, and in default of appointment, in trust for all the testator's children living at the testator's death equally; and the testator stated that his reason for giving the said general power of appointment to the defendants was that he had the fullest confidence in them that they would do what was right and proper, and that they would dispose of the property, subject to the said power, justly and fairly, and as they thought it ought to be disposed of and divided by the testator.

This was an action for the administration of the estate of the testator, the plaintiff being his son.

By a deed poll dated July 20, 1882, Lord Arundell absolutely and for ever released the moiety, subject to the power, to the intent that such moiety might go and be held upon the trusts by the said will declared concerning the same in default of appointment.

The question was, whether the power was capable of being released.

Graham Hastings, Q.C., Wolstenholme, and *Ingle Joyce*, for the plaintiff, contended that the release had extinguished the power, and that the plaintiff was entitled to a share of the moiety thus released. They argued that, even though the power was coupled with a duty, and therefore, previously to the Conveyancing Act, 1881, could not have been released, yet, by section 52 of that Act, the trustees had power to release it.

Davey, Q.C., Bardswell, and *Bagshawe* for the defendants.

KAY, J., said that, assuming that an ordinary collateral power might be released under section 52 of the Act, the question was whether, if a power given to trustees, coupled with a duty, could be so released; and he held it could not. He came to the conclusion, from the circumstances of the family and the language of the will, that the power in question was coupled with a duty, and could only be extinguished by the trustees joining in making an irrevocable appointment under it.

Chancery Division.
CHITTY, J.
July 9.

In re MASON. TURNER *v.* MASON.

Practice—Parties—Adding Parties after Judgment and Certificate.

The order in this case, noted *supra*, p. 95, giving leave to amend the writ and statement of claim, and to serve them together on an absconding defendant, was subsequently discharged, his lordship considering it doubtful whether he had jurisdiction to make such an order in the absence of the proposed new defendant.

It had been ascertained that, in *Re Stokes, Aikman* v. *Paget*, the unreported case before the Court of Appeal, on the authority of which CHITTY, J., made the order, the proposed new party appeared and consented by counsel.

Chancery Division.
DENMAN, J.
July 25, 26.

SMITH *v.* THE LAND AND HOUSE PROPERTY COMPANY (LIMITED).

Vendor and Purchaser—Rescission—Misrepresentation.

This was an action by a vendor for specific performance of a contract for the sale of an hotel. Specific performance was resisted, and rescission sought by counter-claim on the ground of misrepresentation in the particulars of sale attached to the conditions on which the property was sold. The particulars stated the property was held on lease by 'a very desirable tenant,' and 'by a most desirable tenant.' There was evidence that the purchasers had authorised their agent to enter into the contract on faith of the statements in the particulars.

W. W. Karslake, Q.C., and *R. S. Wright* for the plaintiffs.

Davey, Q.C., and *W. A. Raikes* for the defendants.

DENMAN, J., rescinded the contract.

Chancery Division.
NORTH, J.
June 14, 22.
July 24.

BARINGTON *v.* HAMSHAW.

Landlord and Tenant—Equitable Tenancy—Distress.

This was an action for specific performance of a contract for a lease brought by the intended lessee who was in possession; he claimed damages for wrongful distress, and upon that part of the case the question was raised whether distress on an equitable lessee was lawful.

Barber, Q.C., Underhill, Q.C., and *Bunting* for the plaintiff.

Jelf, Q.C., Warmington, Q.C., and *Brookes* for the defendant.

NORTH, J., held that a tenant under an agreement for a lease is liable to distress.

Chancery Division.
NORTH, J.
July 30.

Re DE ROSAZ. RYMER *v.* DE ROSAZ.

Practice—Taxation of Costs—Perusal of Exhibits and Affidavits—Rules of Supreme Court (Costs), August, 1875.

A question arose, on the further consideration of this action, as to the costs of perusing a number of important exhibits, such as opinions of foreign lawyers on questions of foreign law, and translations of foreign documents.

It was stated that the practice of the taxing masters was not to allow for the perusal of such exhibits, as it was not provided for by the above rules, Schedule 'Perusals,' unless a special order was made by the Court.

In a case of *Coucha* v. *Murrietta* (May 1, 1880), before Vice-Chancellor Bacon, an order was made that, in the taxation of costs, the taxing master was to be at liberty to allow 'a special charge for perusal and consideration of the several documents and exhibits in these suits, the amount thereof to be in the discretion of the taxing master.'

Cozens-Hardy, Q.C., and *Jason Smith*, for the plaintiffs, referred to the above order, and asked for a special order in the same form.

Higgins, Q.C., and *Shebbeare, Glasse, Q.C.*, and *F. Bagshawe, Cookson, Q.C.*, and *F. Brabant, W. W. Karslake, Q.C.*, and *Fooks*, and *Everitt, Q.C.*, and *Manby* for the parties.

NORTH, J., made the order asked for, adding the words 'if any' after the words 'the amount thereof.'

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
BRETT, M.R.
COTTON, L.J.
BOWEN, L.J.
Aug. 2.

Ex parte CREDIT COMPANY. *In re* M'HENRY.

Bankruptcy — Liquidation Petition — Appointment of Trustee more than Six Months after filing of Petition— Bankruptcy Act, 1869, *ss.* 6, 125, *subs.* 7.

In this case the debtor, M'Henry, had filed a liquidation petition, and the first meeting of the creditors had been repeatedly adjourned without any resolutions for liquidation or composition having been passed, and after a lapse of nearly four years the creditors had at last passed a resolution that no further proceedings should be taken under the petition, and to apply to the Court to dismiss it. After this the debtor applied to the Court for leave to summon a fresh first meeting, which was granted by the Registrar.

Against this order the Credit Company appealed.

Winslow, Q.C., and *Sidney Woolf*, for the appellants, contended that under subsection 7 of section 125 of the Bankruptcy Act, 1869, the appointment of a trustee under a liquidation petition was equivalent to an adjudication of bankruptcy against the debtor under a bankruptcy petition; and that as by section 6 an adjudication could not be made on a bankruptcy petition more than six months after the act of bankruptcy, the appointment of a trustee could not be made more than six months after the filing of the liquidation petition. They, therefore, argued that if a fresh first meeting were allowed to be summoned the creditors would have no power to appoint a trustee, and the proceedings would consequently be abortive. They relied upon *Ex parte Fenning*, L. R. 3 Chanc. Div. 455.

Finlay Knight for the debtor.

Their LORDSHIPS held, notwithstanding that decision, that a trustee could be appointed by the creditors, although more than six months had elapsed since the filing of the petition. They were of opinion that subsection 7 of section 125 only relates to the effect of the appointment of a trustee after he has been appointed, and that no limitation is imposed by that section on the making of the appointment similar to that which is imposed by section 6 on the making of an adjudication of bankruptcy. They, therefore, dismissed the appeal.

Court of Appeal.
BRETT, M.R.
BOWEN, L.J.
Nov. 5.

REGINA *v.* THE RECORDER OF SHEFFIELD.

Public Health Act, 1875, *ss.* 150, 268—*Apportionment of Expenses of Works in Street—Summary Proceedings—Jurisdiction of Justices of Peace—Appeal to Local Government Board.*

Appeal from the Queen's Bench Division.

The case is reported 52 Law J. Rep. M.C. 78.

The Queen's Bench Division, in discharging a rule *nisi* for a writ of *certiorari* to bring up an order made by the stipendiary magistrate for the borough of Sheffield under section 150 of the Public Health Act, 1875, and confirmed by the recorder of the borough at quarter sessions, adjudging that B. Wake should pay the expenses of sewering, &c., a certain street, were of opinion that in a proceeding by an urban authority under section 150 to recover in a summary manner from the owners in default the expenses incurred in executing works in a street it is not a condition precedent to the jurisdiction of the justices that there should be a valid apportionment, and that the justices were not without jurisdiction because the works were done and the apportionment made on a notice to the owner to sewer, pave, &c., as part of a street land which at the time of such notice was enclosed private land.

Wake appealed.

Charles, Q.C., and *C. Gould* for the appellant.

The Solicitor-General (*Sir F. Herschell, Q.C.*) (with him *J. E. Barker* and *C. S. Hunter*), for the corporation.

Their LORDSHIPS dismissed the appeal, being of opinion that the complaint of the appellant was against the decision of the local authority; and that the grievance, if the case came within the statute, was a grievance within section 268, which pointed out the remedy—namely, by appeal to the Local Government Board.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Aug. 2.

SMITH *v.* THE DUKE OF MANCHESTER.

Company—Power of Directors to pay Costs of Legal Proceedings—Unsuccessful Winding-up Petition—Construction of Articles—'Ultra vires.'

This was a motion in an action by a shareholder to restrain the directors of a limited company from applying the funds of the company in payment of the costs of a winding-up petition presented by the directors, and which had been dismissed with costs. The directors contended that the winding-up petition had been *bonâ fide* presented in what they considered to be the true interests of the company, and claimed a right to pay the costs under article 100 of the articles of association, which provided that the directors might 'at any time direct any action or other legal proceeding to be commenced and prosecuted on behalf of the company in the name of the company, or of such officer or other person as they might be advised . . . and should be indemnified out of the funds of the company against all costs, damages, and expenses by reason of such action, suit, or proceedings.'

Marten, Q.C., and *Northmore Lawrence* for the motion.

Carson (with him *Millar, Q.C.*) for the defendants.

Owen for the solicitors of the defendants.

Marten, Q.C., replied.

BACON, V.C., held that the proposed payment was not authorised by the terms of article 100, and must be restrained as *ultra vires*, and made an order in the terms of the notice of motion.

Chancery Division.
BACON, V.C.
Aug. 3.

SANDS *v.* WILLIAMS.

Will—Construction—Particular and general Residue—Lapse.

Testator gave and bequeathed unto his sister Mary Sands, out of his property in the funds, 5,000*l.* stocks for her separate use, and gave and bequeathed the residue and remainder of his said stocks between his four nieces in equal shares and proportions, subject to the payment of his just debts, funeral and testamentary expenses. He gave the rest and residue of his real and personal estate to his sister and brother.

Mary Sands died in the lifetime of the testator, and the question was whether the 5,000*l.* stocks fell into the particular or general residue.

The chief clerk found that it fell into the particular residue and went to the four nieces.

This was an adjourned summons to vary the chief clerk's certificate on this point.

Rawlinson, for the summons, contended that, in the absence of any expressed intention to the contrary, the lapsed legacy fell into the general residue.

Eyre, for the four nieces, was not called on.

BACON, V.C., held that the finding of the chief clerk was right, and dismissed the summons.

Chancery Division.
KAY, J.
July 31. Aug. 1.

Re KIRWAN'S TRUSTS.

Power of Appointment—Appointment by Will—Subsequent Appointment by Codicil and Settlement—Conditional Appointment—Fraud on Power—Defective Execution—Wills Act, 1837 (1 *Vict. c.* 26), *s.* 10—24 & 25 *Vict. c.* 114.

G. S. Kirwan, under the will of his father, had power by deed or will to appoint to his son or daughter or sons or daughters, in such proportions as he might think fit, the principal share wherein he took a life interest in the residuary estate of his father; by his will dated April 3, 1862, he appointed the whole of the share to his daughter M. absolutely. He had other children. M. was married to B. By a settlement dated June 24, 1866, made upon her marriage, it was declared that G. S. Kirwan, in consideration of the marriage, appointed his daughter to receive the property over which he had a power of appointment, only reserving to himself the faculty of disposing in favour of his wife of the reversion of 10,000 francs during her life. G. S. Kirwan by a codicil to his will, dated May 9, 1871, and made in France, where he was then residing, stated as follows:—

When I married my daughter . . . . I expressed the desire of leaving to my wife . . . . a small revenue at my death, ... but not having it in my power to do so, my daughter and her husband . . . . proposed to me as follows—that if I would consent to leave to them the whole of the sum of my share of the residue of my father's estate . . . . which I have power to dispose of in favour of my children, they would take the engagement at my death to have placed in my said wife's name for her life the sum of 10,000 francs, ... and at my wife's death the said sum to return to my said daughter. . . . In the case that my said daughter and . . . . her husband should respect my memory and their signature, then it is my will and desire that my daughter and her husband should and may have the whole of the sum of my aforesaid share in a will signed by me in the year 1862. . . .

This codicil was written and signed by the testator, but was unattested. It was, however, admitted to Probate under 24 & 25 Vict. c. 114.

The question was whether M. took under either of the appointments.

Graham Hastings, Q.C., and *C. L. Chubb* for the petitioner.

Kekewich, Q.C., and *J. G. Wood* for respondents.

Horsbrugh for the trustees.

KAY, J., held that the appointments under the settlement and codicil were invalid as being respectively frauds upon the power; that the appointment under the settlement being bad at law would not be aided by the Court, so as to set aside the effectual appointment in the will by an appointment which would be ineffectual as being a fraud on the power; that, as the codicil was intended to take effect as a testamentary instrument, its defective execution as an appointment could not, in view of sec. 10 of the Wills Act, be aided

by the Court; that therefore neither the settlement nor the codicil operated so as to revoke the will; but that, having regard to the bargain which had been made, a Court of Equity would not permit the appointment in the will to take effect, and that consequently the fund went as in default of appointment.

Chancery Division. Kay, J. Aug. 3. } *Re* Day's Trusts. Paget *v.* Claggett.

Practice — Fund in Court — Stop Order — Petition or Summons—Trustee Relief Act, 8 & 9 *Vict. c.* 96—*Consolidated Order XXVI., Rule* 1—*Chancery Funds Amended Orders, Rule* 6.

This was a petition asking for a stop order over a sum of 4,000*l.* which had been paid into Court under the Trustee Relief Act. It was objected on behalf of persons interested in the fund, subject to the petitioner's claim, that the application should have been by summons in chambers, and that the costs of a petition ought not to be allowed.

C. James and *Langworthy*, in support of the objection, referred to Consolidated Order XXVI., Rule 1.

E. Cutler, in support of the petition, contended that, the fund being over 300*l.*, there was no jurisdiction in matters under the Trustee Relief Act and the Chancery Funds Amended Orders V. to X. to obtain any order in chambers relating to payment out of the fund.

Kay, J., held that the case came within the Amended Orders, Rule 6, and that a petition was necessary; and allowed the costs.

Chancery Division. Kay, J. Aug. 3. } Brown *v.* Collins.

Infant—Practice—Ward of Court.

In an administration action a sum of 50,000*l.* Consols had been carried over to a separate account, entitled 'The Account of Elizabeth Bridget Aly, the wife of Robert Aly, and of her son William Selim Aly, and his issue.' Robert Aly and William Selim Aly were both Frenchmen. Elizabeth Bridget Aly died in the year 1880, and William Selim Aly in 1883, leaving three daughters only. All these three daughters were French subjects, married to Frenchmen, and resident in France, two of them having married while under age. This was an application by the three daughters and their husbands to have the fund paid out to them, and the question was raised whether the two daughters who had married while under age were wards of Court at the dates of their respective marriages, in which case the Court would require proper settlements to be executed for their respective shares.

D. L. Alexander and *Northmore Lawrence*, for the parties interested, referred to the case of *De Pereda* v. *De Mancha*, 51 L. J. Rep. Chanc. 204, where Hall, V.C., held that the proceedings on a summons for the appointment of a guardian to an infant, and the payment into Court of money belonging to the infant were sufficient to constitute the infant a ward of Court.

Kay, J., held that the ladies in question were not wards of Court, and ordered payment out to them of their shares. He was of opinion that the carrying over to a separate account in a suit, to which they were in no way parties, could not constitute them wards of Court, and that even if such a carrying over would have the effect of constituting a natural born British subject a ward of Court it could not have that effect in the case of aliens resident abroad.

Chancery Division. Kay, J. Nov. 5. } *In re* Hart. Orford *v.* Hart.

Will—Construction—Rule in Shelley's case—Curtesy—Limitations whether Legal or Equitable.

The testator, H. G. Hart, who died in September, 1875, by his will dated in December, 1874, appointed the defendant and his daughter, R. G. Pitcher, executor and executrix, and after directing them to pay his debts and funeral expenses, devised unto the defendant and his heirs certain real estate in Norfolk, to hold the same unto the defendant, his heirs and assigns, upon the following trusts—namely, to such uses as R. G. Pitcher should by deed or will appoint, and in default of such appointment, to the use of R. G. Pitcher and her assigns during her life, without impeachment of waste, for her separate use free from the control of her present or any future husband, and after the decease of R. G. Pitcher, in default of such direction or appointment as aforesaid, in trust for the right heirs of R. G. Pitcher. R. G. Pitcher having died without having exercised her power of appointment, the question arose whether her husband was entitled to curtesy.

W. Pearson, Q.C., and *Northmore Lawrence*, *E. Thurston Holland* and *Hadley* appeared.

Kay, J., held that the limitation in favour of R. G. Pitcher for her life for her separate use was equitable, but that the limitation over to her right heirs was legal, that consequently the rule in Shelley's case had no application, and that the husband was therefore not entitled to curtesy.

Chancery Division. Denman, J. Aug. 7, 8. } Westall *v.* Hall.

Specific Performance—Valuation—Uncertainty—Misleading Condition—Separable Contracts.

This was an action by the vendor for specific performance.

The property in question comprised five lots, knocked down to the defendant at a sale by public auction. The property sold consisted of a leasehold brewery and the brewer's interest in certain publichouses. One of the lots bought by the defendant (the first described in the particulars) was the lease of the brewery. The particulars provided that the plant and stock-in-trade should be taken 'at a valuation, to be made in the usual way.' The value of the plant and stock-in-trade was large compared to that of the lease. Three other of the lots bought by the defendant were leases of publichouses. The last lot (lot 10) was also bought by the defendant. It was described as 'the vendor's interest in the Warrior's Arms.' It was stated in the particulars that it was held under an agreement for a year, with an option to purchase the freehold for a sum of 500*l.*, and that the vendor had given notice of his exercise of the option. The Warrior's Arms were mortgaged, together with other property, for 3,000*l.* The mortgagee refused to release this property without payment of the whole debt secured, and the mortgagor was in difficulties. These facts were known to the vendor at the time of the sale.

Three questions in the action were: 1. Whether the particulars as to lot 10 were misleading by reason of the suppression of the above facts, so as to give the defendant a right to repudiate the contract as to lot 10. 2. Whether the contract as to lot 1 could be enforced, by reason as to the term as to valuation, or whether the Court could fix the value. 3. Whether there was an indivisible contract as to all five lots, or separate contracts; and whether, if five contracts, they could be separately enforced.

Barber, Q.C., and *Fellows* for the plaintiff.

W. Pearson, Q.C., and *Rowden* for the defendant.

DENMAN, J., held that the contract as to lot 1 could not be enforced by reason of its uncertainty; that the particulars as to lot 10 were misleading; and that the contracts as to the several lots were separable, though only one memorandum mentioning a lump sum for the purchase money of all had been signed; but that, considering all the circumstances, the contracts with respect to the other lots should not be separately enforced.

Chancery Division. NORTH, J. Aug. 6. } *Re* LESINGHAM'S TRUSTS.

Will—Construction—'Sole and unmarried.'

This was a petition for the opinion of the Court under Lord St. Leonard's Act (22 & 23 Vict. c. 35).

Jemima Lesingham, by her will, dated July 24, 1860, bequeathed the residue of her property to trustees upon trust to invest as therein mentioned, and to pay the income to her husband, Thomas Lesingham, for his life; and, upon his death, upon trust to divide into four equal parts; and, as to one such part, 'upon trust to pay the same unto Julia Hughes, spinster, if she be then sole and unmarried, for her own benefit absolutely,' but, if she were then married, upon trust to pay the income to her for life, and, after her death, for her children as therein mentioned. The testatrix died in June, 1878; and her husband died in April, 1883.

In April, 1861, Julia Hughes married Henry Nepear. There were three children of the marriage, one of whom attained twenty-one in February, 1883.

In February, 1878, a decree *nisi* was pronounced for dissolution of the marriage. This decree was made absolute in December, 1878.

E. S. Ford for the petitioners, the trustees of the will.

Everitt, Q.C., for Mrs. Nepear.

Glasse, Q.C., for the daughter, who attained twenty-one.

NORTH, J., said the question was, whether, under this will, the word 'unmarried' meant 'without having ever been married' or 'without having a husband living at the death of the tenant for life.' Under all the circumstances, he was of opinion that Mrs. Nepear was absolutely entitled to the fund, and there must be a declaration accordingly.

Chancery Division. NORTH, J. Nov. 3. } *Re* LLEWELLYN. LANE *v.* LANE.

Practice—Administration Action—Pending Proceedings—Rules of the Supreme Court, 1883, *Order LV., Rule* 10.

This was an action brought by Mrs. Lane (the wife of the defendant, F. C. Lane), the executrix, and one of the trustees of the will of the late William Llewellyn, and her only child, an infant, against her husband and William T. Llewellyn, the executor and the other trustee of the will, for the administration of the real and personal estate of the testator, and to have a receiver appointed.

The statement of claim (delivered in March, 1883) alleged that disputes had arisen between Mrs. Lane and the defendant William T. Llewellyn as to the division of the testator's plate and jewels. This was denied by the statement of defence.

The action now came on for trial as a short cause, upon a notice of trial dated October 2, 1883.

Minutes of a general administration judgment had been agreed on by the parties, providing for the appointment of a specified person as receiver.

S. B. L. Druce for the plaintiffs.

T. H. Robertson for the defendants.

NORTH, J., held that Order LV., Rule 10, applied. The mere fact that the action had been commenced before the new rules came into operation was not a sufficient reason for making a general administration judgment. He should, therefore, refer the action to chambers, to inquire whether the questions between the parties could be properly determined without such judgment.

Chancery Division. MATHEW, J. Nov. 5. } REID *v.* THE LONDON AND STAFFORDSHIRE FIRE INSURANCE COMPANY.

Company—Prospectus—Misrepresentation—Voidable Contract—Delay.

This was an action to set aside a contract to take shares on the ground that the plaintiff had been induced to take his shares by an incorrect statement in a prospectus.

The writ was issued August 9, 1881. No further step was taken in the action till June, 1882, when a summons was taken out by the plaintiff to put in a statement of claim. In October, 1881 (as the judge held on the evidence), the plaintiff intimated his intention to abandon his action to the defendant company.

Warmington, Q.C., and *Stokes* for the plaintiff.

Barber, Q.C., and *Badnall* for the company.

MATHEWS, J., gave judgment for the defendants.

Chancery Division. MATHEW, J. Nov. 6. } WILKINS *v.* THE CORPORATION OF BIRMINGHAM.

Artisans' Dwellings Act, 1875, *s.* 6, *and schedule* (6) *c.*

This was an action by a leaseholder to compel the corporation to take his leasehold interest in premises —which were within the area of an improvement scheme —at a price which had been fixed by the arbitrator appointed under the Act confirming the scheme. At the time the corporation issued their advertisements, under section 6 (*c*) of the schedule to the general Act, the plaintiff was tenant under a lease of which less than a year had to run. He subsequently obtained from his landlord a renewal for eight years.

Barber, Q.C., and *Beale* for the plaintiff.

Higgins, Q.C., and *Methold* for the defendants.

MATHEW, J., held that new interests capable of being compensated for could not be created after the advertisements, and dismissed the action.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
Nov. 6, 7.

NADIN *v.* BARRETT.

Practice—Rules of Court, 1883, *Order XXXVII., Rules* 1, 5—*Examination of Plaintiff abroad before Special Examiner—Other Witnesses, not named, on Plaintiff's behalf.*

Appeal by the defendant from an order made by KAY, J., directing the appointment of a special examiner in New Zealand to take the examination and cross-examination in that country of the plaintiff in this action, and certain named witnesses and others (not named) on behalf of the plaintiff without prejudice to the right of the defendant to cross-examine the plaintiff at the trial in the presence of witnesses in this country who could speak to his identity.

The petition, although in form an action for redemption of certain mortgaged property, was in substance an ejectment action against the defendant. The plaintiff claimed to be a James Nadin who had left England more than twenty years ago, and had gone to New Zealand, where he had resided ever since. Since his departure he had no communication with his relatives in England, and was supposed to have died. The plaintiff alleged that he was entitled, as the eldest surviving brother of Thos. Nadin, devisee of the property under the will of his father, to whom the equity of redemption of the property belonged. The plaintiff's title did not accrue till 1874, and he first heard of the circumstances under which his title accrued in 1881. The defendant had purchased the property from Samuel Nadin, who, if the plaintiff were not James Nadin, would have been the heir-at-law, and paid off the mortgage. The contract for purchase was made subject to the claim of James Nadin, who, it was stated, was believed to be dead, and the property was also conveyed subject to any claims that might be made by James Nadin. The value of the property beyond the mortgage was small.

The defendant objected that the question being one mainly of identity, he had a right to require the presence of the plaintiff in England for examination in open Court, and that the order was wrong in not naming the persons who were to be called as witnesses.

M'Lean for the defendant.

Robinson, Q.C., and *A. C. Eddis* for the plaintiff.

Their LORDSHIPS held that it was not necessary that the names of the plaintiff's witnesses should be given in the order, and also allowed the examination of the plaintiff to be taken abroad, but varied the order by requiring the plaintiff to give ten days' notice to the defendant's advisers in New Zealand of the names of the witnesses whom they intended to examine, and also by directing that the deposition of the plaintiff should not be read at the trial without the consent of the defendant, such consent to be notified within one month from the receipt by him of the plaintiff's deposition.

Court of Appeal.
BRETT, M.R.
BOWEN, L.J.
Nov. 10.

THWAITES *v.* WILDING AND ANOTHER.

Landlord and Tenant—Lodgers' Goods Protection Act, 1871 (34 & 35 *Vict. c.* 79)—*Service of Declaration under section* 1.

Appeal from the Queen's Bench Division.

Action by a lodger for trespass to her goods.

The plaintiff lodged in one of three rooms let by the defendant Wilding to Stephen Thwaites. On September 1, Stephen Thwaites sued Wilding for 8*l.* for rent, and Wilding distrained for that sum. The plaintiff, the lodger, claimed the goods seized, and served the defendants with a declaration under section 1 of the Lodgers' Goods Protection Act (34 & 35 Vict. 79). The landlord then withdrew from possession, under an agreement with Stephen Thwaites, who paid 1*l.* down, and promised to pay the remainder of the arrears by weekly instalments. These instalments were not paid, and on September 21 the landlord distrained the same goods for the amount of the unpaid arrears of rent, and for rent which had accrued due since the last seizure, and the plaintiff's goods were sold under this distress. The plaintiff did not owe any rent to Stephen Thwaites, and she did not serve any declaration under the Act on him on the occasion of the second distress.

At the trial judgment was entered for the plaintiff; the rule *nisi* having been obtained by the defendants, the Queen's Bench Division gave judgment for the defendants.

The plaintiff appealed.

M'Clymont and *Shearman* for the appellant.

Kisch for the defendants.

Their LORDSHIPS dismissed the appeal, holding that as the plaintiff had not served upon the defendants on the occasion of the second distress any declaration under the Lodgers' Goods Protection Act she could not claim the protection of that Act, and that the second distress was not illegal, as there had not been a voluntary abandonment of the first distress.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Nov. 10.

In re CADOGAN. CADOGAN *v.* PALAGI.

Will—Construction—'Money.'

The testatrix made her will in 1882, two years before her death, as follows: 'I leave one half of the money of which I am possessed to my sister H., and the remainder to be divided equally between my sisters O. and S., and after them to their children.' The testatrix was possessed of a sum of 270*l.* cash at her bankers', between 4,000*l.* and 5,000*l.* invested upon various securities, a share of certain leaseholds, and the proceeds of sale of freeholds, furniture, &c. The question was, how much of this property passed by the will?

Kekewich, Q.C., and *Cecil Austin, Graham Hastings, Q.C.*, and *W. Druce*, and *Algernon Bathurst* appeared.

KAY, J., held that the word 'money' was used by the testatrix in this will in a popular sense, and that all her personal property passed by the gift.

Chancery Division.
KAY, J.
Nov. 9, 13.

Ex parte THE MAYOR OF LONDON.

Practice—Reinvestment of Moneys paid into Court under Lands Clauses Consolidation Act, 1845—*Application by Summons in Chambers — Rules of Court*, 1883, *Order LV., Rule* 2, *subs.* 7—18 & 19 *Vict. c.* 134, *s.* 16.

This was a petition presented by the Mayor and Corporation of London asking for the reinvestment in land of certain sums of money which had been paid into Court under the provisions of the Lands Clauses Consolidation Act by the London, Chatham, and Dover Railway Company and the East London Railway Company in respect of lands taken by them. The railway companies contended that under Order LV. of the New Rules, Rule 2, subs. 7, the application ought to have been made by summons in chambers, and objected to pay the costs of the petition.

On the part of the Mayor it was contended that, by the Lands Clauses Consolidation Act, the application was to be made by petition, and that the New Rules did not purport to be made under 18 & 19 Vict. c. 134, s. 16, which made provision as to the business to be done in chambers, and that Order LV., Rule 2, subs. 7 was *ultra vires*.

Sir A. T. Watson for the Corporation.

Hornell for the London, Chatham, and Dover Railway Company.

F. Wright for the East London Railway Company.

KAY, J., held that subsection 7, Rule 2, of Order LV. was not *ultra vires*, and that the application ought to be made by summons in chambers.

Chancery Division.
CHITTY, J.
Nov. 9.

CUDDEFORD *v.* SMITH.

Practice—Partnership—Receiver and Manager—Prospective Order.

The plaintiffs and defendant being partners in a partnership that would by agreement expire on November 30, 1883, the plaintiffs brought an action for account and winding-up, and on November 9, 1883, moved for the appointment of a manager and receiver.

Crossley, Q.C., and *D. Gazdar* for the plaintiffs.

A. à B. Terrell for the defendant.

CHITTY, J., made an order for the appointment of a receiver and manager, such receiver and manager not to enter upon his duties until December 1.

Chancery Division.
CHITTY, J.
Nov. 10.

In re COORE.

Practice—Petition under Legacy Duty Act (36 *Geo. III., c.* 52), *s.* 32—*Sum in Court exceeding* 1,000*l.*—*Rules of Supreme Court*, 1883, *Order LV., Rule* 2, *subs.* 4 *and* 12.

The effect of subsections 4 and 12 of Rules of the Supreme Court, 1883, Order LV., Rule 2, when taken

together is that an application for advancement of an infant under the Legacy Duty Act out of a sum exceeding 1,000*l.* should be made by petition and not by summons.

Nalder for the petitioner.

Chancery Division. CHITTY, J. Nov. 14. } *In re* MÜNCH'S APPLICATION.

Trade-mark — Registration — Similarity of Marks — Foreign User—'Three-mark Rule'—Trade-marks Act, 1875, s. 6—Trade-marks Registration Rules, r. 19.

Application for registration of a trade-mark.

It appeared that, in 1842, the predecessors in business of an English firm, Messrs. L. & K., invented and began to use a trade-mark on a perfume called Florida Water, consisting of an elaborate combination of a fountain surrounded by figures and foliage, the name of the perfume, and the name of the manufacturers. This mark was registered by Messrs. L. & K., in 1880, as their property in connection with perfume. Mr. Münch, a German subject, residing in Hamburg, now applied for registration of a trade-mark almost identical with that of Messrs. L. & K., and the difference being in the names of the manufacturers and in Hamburg being substituted for London. This mark Mr. Münch alleged had been used by him since 1869 in Germany and elsewhere, and also registered by him at Hamburg and New York. Messrs. L. & K. opposed the application.

Romer, Q.C., and *Macrory* in support of the application.

Aston, Q.C., Whitehorne, Q.C., and *A. C. Nicholl contrà.*

CHITTY, J., said that the two marks bore so close a resemblance that it might fairly be inferred that the later was a copy of the earlier. There was no evidence to show that there had ever been any user of the applicant's mark in England, and there was no doubt that such a use by Münch could from the date of its first adoption have been, and still could be, restrained by Messrs. L. & K. The alleged foreign user without any user in England could not entitle the applicants to registration or bring him within the operation of the 'three-mark rule,' by which similar marks up to the number of three were allowed to be registered if they were proved to have been used side by side before the Trade Mark Act, 1875, and were therefore old marks. In this case no user was proved, and the application must be refused, with costs.

Chancery Division. NORTH, J. Nov. 10. } STREET *v.* CRUMP.

Practice — Rules of Supreme Court, 1883 — *Order XXXII., Rule* 6—*Judgment in Default of Pleading to Counter-claim.*

Motion for judgment.

This was an action brought by one Street against Crump and Mrs. Egersdorff, claiming foreclosure, as equitable mortgagee by deposit from Crump of certain title-deeds. The plaintiff alleged that these deeds had been deposited, by way of mortgage, with Crump by Mrs. Egersdorff by a memorandum of deposit dated July 10, 1877.

On December 11, 1882, Mrs. Egersdorff delivered a statement of defence and counter-claim, alleging that nothing was due from her to Crump, and that the memorandum of July 10, 1877, had been obtained from her by fraud; and she claimed a declaration that neither the plaintiff nor Crump was entitled to any charge on the property; and that they might be ordered to deliver up the deeds to her.

On March 1, 1883, the plaintiff delivered a reply to her counter-claim; and on March 5, 1883, she delivered a rejoinder.

Crump did not deliver any reply to her counter-claim. On November 1, 1883, Mrs. Egersdorff served on Crump a notice of motion for such judgment in default of pleading as she should be entitled to upon her counter-claim.

It was stated at the bar that a compromise had been entered into between Mrs. Egersdorff and the plaintiff, under which the plaintiff had delivered up to her the documents in his possession.

Frank Evans, for Mrs. Egersdorff, now asked for a declaration that Crump was not entitled to any charge on the property in question, or on any of the deeds relating thereto; that the memorandum of July 10, 1877, was void, and ought to be set aside; and that Crump should pay the costs of the action and counter-claim.

Neither the plaintiff nor Crump appeared.

NORTH, J., held that the new rules applied, as the notice of motion had been served after they came into operation. He held also that Mrs. Egersdorff was entitled to the judgment asked for by the motion, subject to a consent brief for the plaintiff being produced.

Queen's Bench Division. Nov. 5. } BRADBURY *v.* COOPER.

Particulars—Slander—Publication by Defendant's Agent —Particulars of Persons to whom published.

Appeal from an order of DAY, J., affirming the master's order that the plaintiff give particulars of the persons to whom, as alleged in the statement of claim, certain words defamatory of the plaintiff were published by 'one C. Timson, at the request and by the direction of the defendant.'

J. W. Jones, for the plaintiff, cited *Eade* v. *Jacobs*, 47 Law J. Rep. Exch. 74; *Benbow* v. *Low*, 50 Law J. Rep. Chanc. 35; and *The Attorney-General* v. *Gaskill*, 51 Law J. Rep. Chanc. 870.

Houghton for the defendant.

The COURT (GROVE, J., and SMITH, J.) affirmed the order under the special circumstances of the alleged publication.

Order affirmed.

Bankruptcy.
BACON, C.J. } *Re* DARBYSHIRE. *Ex parte* HILL.
Nov. 12.

Appeal—Time—Notice to Registrar of County Court—'Forthwith'—Evidence—Bankruptcy Rules, 1870, *Rules* 143, 144.

Appeal from the Wigan County Court.

G. W. Lawrance, for the respondent, took the preliminary objection, relying on *In re Southam, ex parte Lamb*, 51 Law J. Rep. Chanc. 207; L.R. 19 Chanc. Div. 169, that the appeal was out of time, as Rule 144 had not been complied with.

The order appealed from was dated July 18, 1883, the appeal was entered in London within the twenty-one days—viz. on August 11—and notice of appeal was alleged to have been sent 'forthwith' to the registrar of the County Court; but the date of filing such notice, as appeared from the date on the file of proceedings, was October 31.

Mulholland, for the appellant, stated that he was instructed that the notice of appeal had been sent off immediately, but through some mistake of the registrar's it had not been filed in time.

The CHIEF JUDGE said that he must assume, in the absence of evidence to the contrary, that the registrar of the County Court had done his duty in filing the notice of appeal forthwith on its receipt, and that it was incumbent on an appellant to be able, if necessary, to show that he had complied with Rules 143 and 144, and so qualified himself to prosecute his appeal. The objection must, therefore, be allowed, and the appeal dismissed with costs.

Table of Cases.

COURT OF APPEAL.

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COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
Nov. 13.

PICKERING *v.* PICKERING.

Practice—Production and Inspection of Documents—Sealing up of Parts of Books—Partnership Accounts.

One partner having died and appointed his copartner and two others executors, an action was brought by one of the residuary legatees of the deceased partner against the executors for the administration of the testator's estate, and she obtained the ordinary judgment, and also an order for taking the partnership accounts as between the executor partner and the testator's estate.

Upon an application for discovery of the documents in the defendant's possession, the copartner executor admitted that he had the partnership books in his possession, but stated that they contained correspondence with bankers, lawyers, and medical men, and also various entries relating to his own private affairs and to two trust estates not material for the purposes of the action.

The plaintiff applied for a further appointment and for inspection of all the partnership books and documents, and Chitty, J., made the order, except as to such parts as the defendant might object to produce on the ground that they related to the trust estates.

The defendant appealed.

Ince, Q.C., and *MacSwinney*, for the appellant, argued that upon an application for discovery the oath of the producing party was conclusive as to the relevancy of the document, and that he should be allowed to seal up all such parts of the books as he might state in his affidavit had no relation to the partnership.

Romer, Q.C., and *Tyssen, contrà*, urged that the plaintiff was not in the position of an ordinary litigant, but a *cestui que trust* of the deceased partner, and had the same rights as the deceased partner would have had.

Their LORDSHIPS said this was an exception to the general rule contended for by the appellant. The defendant as executor of the deceased partner was a trustee for the plaintiff, the partnership books were partnership property, in which the deceased partner, and through him the plaintiff, had as much right as the defendant. To exclude the plaintiff's right of inspection a general statement that certain entries related to his private affairs was not sufficient, He must so far show the

nature of the subject to which such entries referred as to enable the plaintiff to judge whether he could safely dispense with the inspection of them.

Order of Chitty, J., affirmed.

Court of Appeal.
LORD COLERIDGE, L.C.J.
BRETT, M.R.
BOWEN, L.J.
Nov. 14.

HENRY AND OTHERS (PETITIONERS) *v.* ARMITAGE (RESPONDENT).

Municipal Elections Act, 1875, *s.* 1, *subs.* 2—*Nomination Paper—Misnomer—'Situation of Property in respect of which Burgess subscribing is enrolled on Burgess Roll'—Abbreviation of Christian name.*

Appeal from a judgment of the Queen's Bench Division upon a special case reported 52 Law J. Rep. Q.B. 165.

The respondent and one Skinner were the only candidates for the office of councillor of the borough of Sunderland. A Mr. Young, who was the nominator of Skinner, resided at 6 Belle Vue Crescent; but he had not resided sufficiently long at that house to qualify as a burgess. The entry of his name and qualification in the burgess roll was as follows: '638. Young, John, 6 Belle Vue Crescent and Linden Terrace.' Subsection 2 of section 1 of 38 & 39 Vict. c. 40 provided that 'the nomination paper shall state the surname and other names of the person nominated, with his place of abode and description, and shall be in the form No. 2 set forth in schedule 1 to this Act, or to the like effect.' The signatures of the nominating burgesses in the form referred to in the section were printed as follows: 'E. S. of ——*.' The asterisk referred to a note in the form to the following effect: '*The number on the burgess roll of the burgess subscribing, with the situation of the property in respect of which he is enrolled on the burgess roll.' The nomination paper objected to was signed 'John Young, of *6 Belle Vue Crescent. Reg. No. 638.' The objection taken was that the nomination paper was bad, as the situation of the property in respect of which John Young was enrolled on the burgess roll had not been set out as required by the note to the form given by the Act. The returning officer allowed the objection.

In the same nomination paper of Skinner, his Christian names were entered as 'Wm. Moore.' An objection was taken and allowed that the provisions of the subsection had not been complied with, as the Christian name 'William' should have been written in full.

The Queen's Bench Division (FIELD, J. and WILLIAMS, J.) on appeal held, as to the first objection, that the subsection was mandatory, and that as its provisions had not been complied with, the nomination paper was void. No decision was given as to the second objection.

M'Clymont and *R. L. Wallace* for the appellants.

E. Clarke, Q.C., and *Atherley Jones* for the respondent.

Their LORDSHIPS reversed the judgment of the Queen's Bench Division as to the first objection, being of opinion that if the nomination paper conveyed to persons interested in the election that the candidate had been proposed, nominated, and assented to by properly enrolled burgesses, the provisions of the Act were sufficiently complied with; and, as to the second objection, that it had been decided in *Regina* v. *Bradley* (30 Law J. Rep. Q.B. 180) that 'Wm.' was a sufficient statement of the name 'William.'

Court of Appeal.
COLERIDGE, C.J.
BRETT, M.R.
BOWEN, L.J.
Nov. 14, 15.

MILNES *v.* THE MAYOR OF HUDDERSFIELD.

Water Company—Duty to Supply Pure Water—Water Rendered Poisonous in Service Pipe—Waterworks Clauses Act, 1847 (10 & 11 *Vict. c.* 17), *ss.* 35 *and* 45 *—Local Act* (32 & 33 *Vict. c. cx.*).

Appeal from the judgment of MATHEW, J., given on further consideration.

The case is reported 52 Law J. Rep. Q.B. 64.

Action by a consumer of water against the corporation as the waterworks authority for Huddersfield for damage caused by the water having become poisoned owing to its having passed through a lead service or connecting-pipe which carried the water from the mains into his house.

Mathew, J., gave judgment for the defendants.

The plaintiff appealed.

Wills, Q.C., Waddy, Q.C., with them *C. Dodd*, for the appellant.

The Solicitor-General, Forbes, Q.C., and *R. V. Williams*, for the defendants, were not called on.

Their LORDSHIPS dismissed the appeal, holding that the leaden pipe which caused the injury was not the property of, or under the control of, the corporation; but that it was laid down by them under an agreement with the consumer, and that the corporation had not failed in their statutory duty.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 16.

Ex parte STRAWBRIDGE & OTHERS. *In re* HICKMAN.

Bankruptcy—Scheme of Settlement—Resolutions for—Approval by the Court—Discretion—Bankruptcy Act, 1869, *ss.* 28, 125, 126.

This was an appeal against a decision of BACON, C.J., approving a resolution for a scheme of settlement which had been duly passed by the creditors of the debtor, and accepted by the trustee under section 28 of the Bankruptcy Act, 1869.

Under the scheme, a composition of 2*s.* 6*d.* in the pound was to be accepted, and an order of adjudication which had been made against the debtor was to be annulled.

It appeared that the father of the debtor and his solicitor, who were both creditors for large amounts, had obtained possession of nearly the whole of the assets under writs of *elegit* which had been issued on their behalf against the debtor.

The question was, whether the Court was bound, under section 28, to approve resolutions for a scheme of settlement which had been duly passed by creditors, or whether it had a discretion to refuse its sanction in a case where it considered that the resolutions were such as should not have been passed.

E. Cooper Willis, Q.C., and *Eve* for the appellant.

Winslow, Q.C., and *J. A. G. Hamilton* for the respondent.

Their LORDSHIPS held that the duty of the Court under section 28 was very different from that under

sections 125 and 126, under which the registrar was bound to register resolutions which had been passed by a statutory majority of the creditors. Here, they considered, there were suspicious circumstances requiring investigation, and the resolutions were consequently not such as ought to be approved by the Court.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 16.

Ex parte JOHNSON. *In re* JOHNSON.

Bankruptcy—Adjudication—Debtor's Summons—Service—Incorrect Copy—Affidavit of Service—Bankruptcy Act, 1869, *ss.* 6, *subs.* 6, 82—*Bankruptcy Rules*, 1870, *rule* 61.

This was an appeal from an order of Mr. Registrar Hazlitt, adjudicating the appellant a bankrupt.

The adjudication was made upon a petition in bankruptcy, presented against the appellant by Robert Greening. The alleged act of bankruptcy upon which the petition was founded was, that the debtor had failed to comply with a debtor's summons, requiring him to pay a sum due of an amount of not less than 50*l.*, under section 6, subsection 6, of the Bankruptcy Act, 1869. The debtor objected to the order of adjudication, on the ground that the summons had not been properly served upon him—(1) because the sealed copy which was left with him was inaccurate in several respects; (2) because it was served, not by the creditor or his attorney, as required by rule 61 of the Bankruptcy Rules, 1870, but by a solicitor's clerk. He also objected that the affidavit of service of the summons which had been filed did not correctly state the address of the deponent.

It appeared that in the copy of the summons which was served upon the debtor, the amount of the debt was incorrectly stated to be 24*l.*, instead of 74*l.*, which was shown to be due by the particulars annexed to the summons. The copy was also inaccurate in another respect, viz., that the name of the petitioning creditor was in one place incorrectly given as Henry instead of Robert.

It also appeared that the appellant, before filing the copy of the summons which had been served upon him, had torn off the annexed particulars.

Wyatt Hart and *Dale Hart* for the appellant.

F. Cooper Willis for the respondent.

Their LORDSHIPS overruled all the objections, and upheld the order of adjudication. They were of opinion that the inaccuracies complained of were merely formal defects, within the meaning of section 82. They also expressed their strong disapproval of the conduct of the appellant, in tearing off from the copy of the summons the particulars which had been annexed to it when served upon him.

Court of Appeal.
BRETT, M.R.
BAGGALLAY, L.J.
BOWEN, L.J.
Nov 19.

HALL *v.* BRAND.

Practice—Subpœna to Witness in Scotland—Action and all Matters in Difference referred—17 & 18 *Vict. c.* 34, *s.* 1.

Appeal from a refusal of the Divisional Court (GROVE, J., and MATHEW, J.) to grant an *ex parte* application, made pursuant to the provisions of 17 & 18 Vict. c. 34, s. 1, for a subpœna *ad testificandum* to issue to certain witnesses who resided in Scotland to attend and give evidence in England.

An action had been brought by the plaintiff to recover for the hire of a dredger, and an order was made by consent that the cause and 'all matters in difference' should be referred to a special referee.

Maurice Powell in support of the application.

Their LORDSHIPS dismissed the application, being of opinion that where 'all matters in difference' are referred, the proceedings before the arbitrator are not proceedings 'in any action' within the meaning of 17 & 18 Vict. c. 34, s. 1.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Nov. 16.

CALEDONIAN RAILWAY COMPANY *v.* SOLWAY JUNCTION RAILWAY.

Company incorporated by Act of Parliament—Railway Company—Application to Parliament—'Wharncliffe Order' (Standing Orders, H.L., CLXXXV.)—Companies Clauses Consolidation Act, 1845, *s.* 100—*Injunction.*

This was an application to restrain the directors of the defendant company from paying out of the assets of that company the costs and expenses incurred by them in the promotion of a bill in the House of Lords.

The directors of the defendant company had been authorised by a resolution of three-fifths of the shareholders present at the meeting to promote the bill in question. The plaintiff company were the holders of 60,000*l.* worth of preference shares in the defendant company, and objected to the assets of the defendant company being used in payment of their costs, inasmuch as the promotion of this bill was *ultra vires* the provisions of the defendant company's Act.

Marten, Q.C., and *Haldane* for the plaintiffs.

Speed, for the defendants, argued that as the directors had complied with the 'Wharncliffe Order' (House of Lords Standing Orders, CLXXXV.), they were entitled to be indemnified out of the assets of this company under the Companies Clauses Consolidation Act, 1845, s. 100, against the payment of these costs, incurred by them in pursuance of a resolution by three-fifths of the shareholders.

BACON, V.C., said the principal feature of all these railway Acts was that the company's assets should be applied for the purposes of the undertaking, and for no other purpose. It was not competent for the shareholders by complying with the Wharncliffe Order to repeal the Act of Parliament. What was proposed to be done was therefore unlawful, and the preference shareholders had a right to restrain the application of their money for unlawful purposes.

Injunction till trial granted.

Chancery Division.
KAY, J.
Nov. 15.

THE COMPAGNIE DU SENEGAL *v.* WOOD.

Practice—Arbitration—Stay of Proceedings—Agreement to refer—Power of Court to appoint Receiver and stay all further Proceedings with a view to a Reference to Arbitration.

The defendants S. & Co. agreed to build a ship for the plaintiffs, and there was a clause in the contract provid-

ing that all matters in difference relating to the subject-matter of the contract should be referred to arbitration. The ship was nearly finished, and sums of money had been paid by the plaintiffs under the contract. The plaintiffs alleged that the ship was not in accordance with the contract, and S. & Co. denied this. The plaintiffs brought this action claiming a lien on the ship for the moneys paid and the appointment of a receiver. S. & Co. had assigned their interest by way of mortgage to W. & Co., bankers, who were defendants. The plaintiffs now moved for the appointment of a receiver, and the defendants moved that all proceedings in the action might be stayed and the matters in question referred to arbitration. The ship would soon be ready to sail. It was not disputed that it was desirable to appoint a receiver, and W. & Co. (who had taken possession of the ship) were willing to be appointed receivers.

W. F. Robinson, Q.C., and *F. Thompson*, for the plaintiffs, argued that where it is necessary to appoint a receiver or grant an injunction in an action the Court ought to allow the action to proceed, and not stay proceedings with a view to a reference to arbitration. They referred to dicta in *Willesford* v. *Watson*, 42 Law J. Rep. Chanc. 447; L. R. 8 Chanc. App. 473; and *Law* v. *Garrett*, L. R. 8 Chanc. Div. 26.

Graham Hastings, Q.C., and *Sir A. Watson* for the defendants.

KAY, J., after considering the dicta cited and referring to his own decision in *Halsey* v. *Windham* (Notes of Cases, 1882, p. 90; Weekly Notes, 1882, p. 108), held that it was competent to the Court in the exercise of its discretion in a proper case to appoint a receiver or grant an injunction, and allow the other matters in the action to go to arbitration; and he made an order appointing W. & Co. receivers and staying all further proceedings except for the purpose of carrying out that order, with liberty to apply to the Court when the award was made, and also general liberty to apply so as to enable the parties to make any necessary application pending the arbitration.

Chancery Division.
KAY, J.
Nov. 15.

In re WALL.

Practice—Ward of Court—Settlement—Husband Marrying Ward in Defiance of Order of Court excluded altogether from Participation.

S., a man of some means, aged 40, paid attentions to a female ward of Court entitled to property producing 1,000*l.* a year, and an order was made prohibiting any communication between them. In defiance of this order S. induced the ward to contract a secret marriage with him, and kept their residence concealed for a time, but subsequently, under pressure, submitted himself to the jurisdiction, and was committed to prison for his contempt. The question was as to the form of the settlement to be made of the property of the ward, who was still under age. S. did not offer to bring any property into settlement.

Rigby, Q.C., and *Stallard*, for the ward of Court and *W. F. Robinson, Q.C.*, and *Stallard*, for S., submitted that the settlement ought not to be framed so as to wholly exclude the wife from appointing any portion to the husband, at all events in the event of there being no issue of the marriage. That would be to punish the ward, which it was not the practice of the Court to do.

Graham Hastings, Q.C., and *Byrne* for the guardian.

KAY, J., thought that adventurers who, in defiance of the orders of the Court, elope with wards having property, ought to be excluded altogether from participation in the property of such wards. He referred to the form of settlement in *Field* v. *Moore* (19 Beav. 167, at pp. 190, 191), where, in the ultimate power of appointment given to the wife in default of issue of the marriage, words were inserted excluding the husband; and he directed that that form should be adopted in the present case.

Chancery Division.
KAY, J.
Nov. 17.

In re BARRS HADEN'S SETTLED ESTATES.

Practice—Jurisdiction—Settled Estates Act, 1877—*Settled Land Act*, 1882—*Sale by Tenant for Life notwithstanding existing Order for Sale under Settled Estates Act.*

In this case the question arose whether the existence of an order for sale of settled lands under the Settled Estates Act, 1877, prevented a tenant for life from exercising his statutory power of sale under the Settled Land Act, 1882.

A railway having cut through a settled estate an order was obtained on December 20, 1878, under the Settled Estates Act, 1877, sanctioning a sale of certain outlying and detached portions. That order had never been acted upon, and the tenant for life being now desirous of selling under the Settled Land Act took out a summons to obtain the leave of the Court to his so doing.

W. Pearson, Q.C., for the tenant for life.

W. G. Robinson for the remainderman, an infant.

KAY, J., held that the Court had power to absolve a person from carrying out an order under the Settled Estates Act, 1877, or, in other words, to stay proceedings under such order; but not being of opinion that a case for so doing had been made out, he refused the present application.

Chancery Division.
CHITTY, J.
Nov. 19.

SAWYER *v.* SAWYER.

Settlement—Trustees—Breach of Trust—Contribution between Trustees.

Where an action has been instituted to administer the trusts of a settlement, and to make the trustees liable for a breach of trust, and an order has been made against the trustees to make good that breach, the Court will make no order for contribution as between the defaulting trustees themselves. *Butler* v. *Butler*, 49 Law J. Rep. Chanc. 734; L. R. 14 Chanc. Div. 329, not followed.

Romer, Q.C., and *Jolliffe*; *Davey, Q.C.*, and *Langley*; *H. Williams* and *M'Swinney* appeared for the different parties.

Chancery Division.
PEARSON, J.
Nov. 16, 17.
} *In re* RALPH'S TRADE-MARK.

Trade-Marks Registration Act, 1875 (38 & 39 *Vict. c.* 91), *ss.* 2, 3, 5, 10—*Trade-Marks Rule* 33 *of February*, 1883—*Rectification of Register—Removal of Mark* —'*Engaged in Business*'—*Words descriptive of Patented Article.*

The assignee of a patent of a washing machine applied to it the name of 'The Home Washer,' and registered that name as his trade-mark in respect of it. He did not manufacture the machines, or any other goods in the same class, but granted an exclusive license to a manufacturing firm, who paid him royalties. They invented and patented various improvements in the machine, and after the expiration of the patent they continued to manufacture the improved machines, and to describe them by the old name, but paid no royalties, and the registered proprietor had not, after a year and nine months from the expiration, begun to manufacture, though he had been in negotiation with manufacturers for them to do so in conjunction with him.

The former licensees now moved to remove the mark from the register.

Higgins, Q.C., and *E. S. Ford* for the motion.

J. Cutler for Ralph.

PEARSON, J., held that the former licensees (against whom the registered proprietor was also moving for an injunction) were 'persons aggrieved,' within rule 33; and that the mark must be removed from the register of trade-marks, on the ground that, notwithstanding the negotiations, the registered proprietor was not 'engaged in any business concerned in the goods, within the same class as the goods with respect to which the mark was registered.' And he also stated that in his view a patentee is 'engaged in any business,' &c., so long as he receives royalties under his patent, even though he does not himself manufacture; and that the name by which a patented article is generally known, and which is therefore descriptive of it, becomes *publici juris* at the expiration of the patent, and cannot properly be registered as a trade-mark.

Chancery Division.
PEARSON, J.
Nov. 17.
} *Re* CALTON'S WILL.

Practice—Petition for Payment out of Court—Costs—Cash, under 1,000*l.*, *Paid into Court the Lands Clauses Consolidation Act*, 1845—*Rules of Supreme Court*, 1883, *Order LV., rule* 2 (*subs.* 2, 7).

This was a petition for the sale of a sum of 458*l.* Consols, and the division of the proceeds of sale between the petitioners in certain proportions; and that, pursuant to section 80 of the Lands Clauses Consolidation Act, 1845, the Corporation of Bath might pay the costs of the application, and of all proceedings relating thereto.

This Consols fund represented a sum of 430*l.* cash, paid into Court on February 13, 1872, by the Corporation of Bath, to the credit of '*ex parte* the Mayor, Aldermen, and Burgesses of the City and Borough of Bath, in the matter of the Bath Act, 1870.'

The Bath Act, 1870, incorporated the provisions of the Lands Clauses Consolidation Act, 1845.

Order LV., rule 2, provides that the business to be disposed of in chambers, by judges of the Chancery Division, shall consist of (*inter alia*) the following matters:—(Subs. 2) 'Applications for payment or transfer to any person of any cash or securities standing to the credit of any . . . matter, where the cash,' or securities do not exceed 1,000*l.* (Subs. 7) 'Applications for interim and permanent investment, and for payment of dividends under the Lands Clauses Consolidation Act, 1845.'

Bissill, for the petition.

Charlton Hawkins, for the Corporation, submitted that the application should have been made (under subsection 2), by summons at chambers; and that, therefore, they ought only to pay such costs as would have been thereby occasioned.

PEARSON, J., held that subsection 2 of rule 2 did not apply. The respondents must pay the costs in the usual way.

Chancery Division.
PEARSON, J.
Nov. 19.
} TOWSE *v.* LOVERIDGE.

Practice—Notice to Co-defendant—Leave of Judge—Rules of Supreme Court, 1883, *Order XVI., rule* 55.

One of the defendants to this action was desirous to issue a notice, under Order XVI., rule 55, against a co-defendant claiming to be entitled to contribution or indemnity against him.

The Clerk of Records and Writs had refused to seal the notice without the leave of a judge.

Elgood, for the defendant, submitted that the notice might be issued without the leave of a judge. He referred to rule 48.

PEARSON, J., held that no leave was required.

Chancery Division.
PEARSON, J.
Nov. 20.
} HILBERS *v.* PARKINSON.

Marriage Settlement—Covenant to Settle after-acquired Property—Estate Tail.

Special case.

By the settlement dated October 13, 1875, made on the marriage of the plaintiff, Maria Hilbers (then Maria Parkinson, spinster), and her husband, the defendant, George C. Hilbers, it was agreed and declared that if Maria Hilbers then was, or if during the then intended coverture she or George C. Hilbers in her right at one and the same time should, under the will of her father, become seised or possessed of or entitled to any real or personal property of the value of 300*l.* or upwards for any estate or interest whatsoever in possession, reversion, remainder, or expectancy (except jewels, &c.), then, and in every such case, George C. Hilbers and Maria Hilbers and all other necessary parties, should, at the cost of the trust estate, as soon as circumstances would admit, convey, assign, and assure the said real or personal estate to or otherwise cause the same to be vested in the trustees, upon the trusts therein mentioned.

Mrs. Hilbers' father had, by his will, made in March, 1873, devised his real estate situate in the parish of Mablethorpe, to trustees in trust for his daughter, the plaintiff, and the heirs of her body. He died in December, 1874.

The question was whether the plaintiff was bound to

convey the Mablethorpe property for her estate tail therein or otherwise to the trustees of the settlement.

Cookson, Q.C., and *Langworthy* for the plaintiff.

Freeman for the defendants, the trustees.

D. W. Marsden for the husband.

PEARSON, J., read the settlement as meaning that if the wife became entitled to real estate for any estate in possession, she was bound to convey and assure that property to the trustees for such estate in possession as she had. It could not mean more than that. It was admitted that she could not be compelled to execute a disentailing deed, give herself an estate in fee, and then convey that estate to the trustees. It was also agreed that it was impossible for her to convey her estate tail. He, therefore, came to the conclusion that the estate tail was not bound; as the covenant was not intended to apply to an estate which she could not convey.

Chancery Division.
NORTH, J.
Nov. 7, 8.
In re WALNE. WALNE *v.* HILL.

Will—Construction—Legacy on Condition—Fulfilment of Condition rendered impossible by Acts of Testator—Legacy Revoked.

By codicil of December, 1880, to his will (dated in November, 1877), A. S. W. gave various legacies, including a legacy of 2,000*l.* to P. T. By codicil of March, 1881, testator appointed P. T. and A. E. G. executors and trustees of his will, jointly with J. H. H., and he bequeathed to P. T. 500*l.*, and to A. E. G. 1,000*l.*, on condition that they should prove the will and codicils. By codicil of later date testator revoked all legacies (including P. T.'s 2,000*l.*) given by codicil of December, 1880, and also revoked P. T.'s appointment as executor and trustee, and appointed T. W. executor and trustee, jointly with J. H. H. and A. E. G. Testator died in June, 1881, and the three persons last mentioned proved his will.

The question was whether P. T. was or was not entitled to the legacy of 500*l.*, without proving the will or acting as trustee, that having been rendered impossible by the act of the testator himself in revoking the appointment.

Higgins, Q.C., and *Farwell; H. A. Giffard, Q.C.*, and *Byrne; Cookson, Q.C.*, and *Rawlins;* and *Cozens-Hardy, Q.C.*, and *Finch* appeared.

NORTH, J., held that the condition was not released by the revocation of the appointment of P. T. as executor and trustee, but that that revocation carried with it the revocation of the legacy, and that P. T. was not entitled to the 500*l.*, as he had not fulfilled and could not fulfil the conditions upon which it was given.

Chancery Division.
NORTH, J.
Nov. 7, 8.
M'EWAN *v.* CROMBIE.
PORTER *v.* GRANT.

Administration Action—Insolvent and Defaulting Trustee—Set-off—Costs—Apportionment.

Administration action.

Glasse, Q.C., and *Levett* for the beneficiaries.

Cozens Hardy, Q.C., and *Vaughan Hawkins* for the trustees.

NORTH, J., held as follows: In an administration action, where a sum is found to be due from the estate to two trustees jointly, one of whom is insolvent and a debtor to the estate, the sum due to the two will not be set off against the sum due from the one, but the solvent trustee is entitled, as a matter of right, to an inquiry whether any, and what part of the sum due to the two is, as between the two, due to the insolvent trustee, and to have the sum so found to be due alone set off. In such a case the insolvent trustee is not, since the Bankruptcy Act, 1869, entitled to receive his costs of the action out of the estate until he has made good the debt which he owes. *Lewis* v. *Trask*, L. R. 21 Chanc. Div. 862, and *In re Basham, Hannay* v. *Basham*, 52 Law J. Rep. Chanc. 408; L. R. 23 Chanc. Div. 195, followed. *Smith* v. *Dale*, 50 Law J. Rep. Chanc. 352; L. R. 18 Chanc. Div. 516, and *Clare* v. *Clare*, 51 Law J. Rep. Chanc. 553; L. R. 21 Chanc. Div. 865, not followed. If in such a case the trustees' costs consist in part of separate costs of the solvent trustee, and part of separate costs of the insolvent trustee, and in part of costs common to the two, the solvent trustee is not entitled to the whole of such costs, but only to his own separate costs, and to so much of the common costs as the taxing master apportions to him. *Smith* v. *Dale*, 50 Law J. Rep. Chanc. 352; L. R. 18 Chanc. Div. 516, followed. *Watson* v. *Row*, 43 Law J. Rep. Chanc. 664; L. R. 18 Eq. 680, not followed.

Chancery Division.
NORTH, J.
Nov. 16, 17, 19, 20.
GOODHART *v.* HYETT.

Easement—Watercourse—Right of Access.

This was an action to restrain the defendant from building over a line of underground pipes passing through his own property. The plaintiff had a right to the flow of fresh water along the pipes from a perennial spring; the relief was claimed on the ground that the projected building would interfere with the plaintiff's access to the pipes for cleansing and repairing purposes.

W. W. Karslake, Q.C., and *S. Dickenson* for the plaintiff.

Higgins, Q.C., and *Spence* for the defendant.

NORTH, J., granted an injunction.

Bankruptcy.
BACON, C.J.
Nov. 19.
Re WILLIAMS. *Ex parte* PEARCE.

Bill of Sale—Bills of Sale Act (1878) *Amendment Act*, 1882, *ss.* 7, 9—*Instrument not in accordance with the Form given by the Act.*

Appeal from the County Court of Cardiff.

By a bill of sale the grantor, in consideration of 30*l.* cash and 10*l.* by way of bonus, assigned certain chattels by way of security for the payment of 40*l.* and interest thereon at 5 per cent. The grantor also covenanted (1) to repay the said sum of 40*l.* forthwith; (2) to produce receipts for rates, rents, and taxes forthwith; (3) not to do anything whereby he should become bankrupt; (4) power to grantor to seize goods and covenant not to remove same; (5) power to seize if execution shall be or shall have been levied; (6) power to grantor to relinquish and retake possession; (7) to pay 5 per cent. on all money due by way of commission for expenses of taking possession and all other expenses. The bill of sale then

contained a proviso incorporating section 7 of the Bills of Sale Amendment Act, 1882, which provides that personal chattels assigned under a bill of sale shall not be liable to be seized for other than the five causes specified therein.

The County Court judge had decided that the bill of sale not being in the form given in the Act was void.

The bill of sale holder appealed.

A. T. Lawrence, for the appellant, argued that the consideration was truly stated, and that the rate of interest was definite; that the proviso incorporating section 7 cured the defects caused by the stipulations for maintenance of the security being more stringent and numerous than the stipulations allowed by the Act.

Winslow, Q.C., and *C. C. Scott* for the respondent.

The CHIEF JUDGE said that though the consideration might be truly stated, it was nevertheless not in accordance with the provisions of the Act, and that the instrument, not being in the form given by the Act, could not be cured by a mere proviso incorporating section 7; the bill of sale, therefore, was void, and the appeal must be dismissed, with costs.

Queen's Bench Division. Nov. 19. } BOOTH *v.* TRAIL. THE MAYOR, &c., OF SUNDERLAND (GARNISHEE).

Attachment of Debts—Order XLV., rule 2—Pension—Instalments of Superannuation Allowance—Debt Owing or Accruing.

Garnishee summons, referred to the Court by PEARSON, J., from chambers.

Plaintiff had obtained judgment for 27*l.* against the defendant, a retired constable, who, under 11 & 12 Vict. c. 14, was entitled to be paid by the Corporation of Sunderland a pension or superannuation allowance of 40*l.* a year by quarterly payments. The plaintiff having obtained an order for attachment of debts owing and accruing to the defendant, called upon the Corporation by this summons to show cause why an order should not be made upon them to pay to the plaintiff the money due and to become due to the defendant in respect of his pension. At the date of the summons one quarter's pay was due, and in the treasurer's hands.

T. Willes Chitty for the plaintiff.

Julian Robins for the Corporation.

The COURT (LORD COLERIDGE, L.C.J., and STEPHEN, J.) held that the quarter's allowance actually due was a debt attachable, and made the order accordingly, excluding any future instalments of the allowance from its operation, as not constituting a debt owing or accruing within Order XLV., rule 2.

Queen's Bench Division. Nov 20. } DUCK *v.* BATES.

Copyright—Dramatic Piece—Performance at Hospital for Benefit of Patients—Place of Dramatic Entertainment—3 & 4 Wm. IV. c. 15, ss. 1, 2, and 5 & 6 Vict. c. 45.

This was an action brought in the County Court to recover damages for a performance of the play 'Our Boys' at Guy's Hospital under the following circumstances. It appeared that the play in question had on two occasions been performed by amateurs in the governor's room at the hospital, and at their own expense; the performances were solely for the amusement of the patients and nurses and their relations and friends, to whom tickets were issued without payment. The plaintiff, as assignee of the copyright of the above play, claimed to recover damages in respect of these performances under the provisions of 3 Wm. IV. c. 15, s. 1, extended by 5 & 6 Vict. c. 45 to musical compositions. By the former Act the author or his assignee shall have, as his own property, the sole liberty of representing any play 'at any place of dramatic entertainment whatsoever' for a specified period. By section 2 persons performing pieces contrary to the provisions of the Act are made liable 'to the payment of an amount not less than 40*s.*, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the proprietor therefrom, whichever shall be the greater damage.'

The County Court judge held that there had been a performance of the piece at a 'place of dramatic entertainment,' though the place was not 'public,' and gave judgment for the plaintiff. The defendant appealed.

Lumley Smith, Q.C. (*Smythies* with him), for the defendant, argued that the Acts clearly contemplated a performance in public by which the proprietor might be prejudiced, as distinguished from a mere private entertainment.

S. Leonard, for the plaintiff, contended that the performances in question came within the provisions of the statute (3 & 4 Wm. IV. c. 15), and relied on an *obiter dictum* by Brett, M.R., in *Wall* v. *Taylor*, reported in 51 Law J. Rep. Q.B. 547; L.R. 11 Q.B. Div. at page 107.

The COURT (LORD COLERIDGE, C.J., and STEPHEN, J.) reversed the decision of the County Court judge, and held upon the above facts that there had been no performance at a place of dramatic entertainment within the meaning of 3 Wm. IV. c. 15.

Appeal allowed.

Queen's Bench Division. Nov. 20. } HESKE *v.* SAMUELSON & Co.

Employers Liability Act, 1880 (*44 & 45 Vict. c. 42*), *ss. 1, 2—Personal Injuries to Workman—'Defect' in 'Condition' of Machinery—Improper use of 'Lift.'*

This was an appeal from the decision of a County Court judge under the following circumstances:—

The plaintiff brought her action, under the provisions of Lord Campbell's Act, to recover compensation for personal injuries caused to her husband, and which resulted in his death by reason, as the plaintiff alleged, 'of a defect in the condition of the machinery and plant used in the business of the employer' (the defendant), within the meaning of 43 & 44 Vict. c. 42, s. 1, subs. 1. It appeared that the deceased was engaged as a workman at the foot of a blasting furnace some eighty-five feet high, and it was his duty to fill barrows with coke and to wheel them on to a platform. Whilst the coke was being raised by means of machinery to the edge of the furnace a large piece fell from the lift (which was not sufficiently protected at the side) upon the deceased and killed him.

The learned County Court judge nonsuited the plaintiff on the ground that there was no 'defect' in the 'condition' of the lift within the meaning of the Employers Liability Act. A rule *nisi* was afterwards obtained to set aside the nonsuit, against which

R. V. Williams, on behalf of the defendant, now showed cause, and contended that the condition of a thing signified its state and condition in itself, and that a machine, perfect as far as itself was concerned, was not out of condition because it was applied to a purpose for which it was not well adapted. He referred to section 2, subsection 1, of 43 and 44 Vict. c. 42.

Austin, for the plaintiff, was not called upon to argue.

The COURT (LORD COLERIDGE, C.J., and STEPHEN, J.) held that the lift, having been used for a purpose for which it was not fit, was defective in its condition within the meaning of the Act, and that there must accordingly be a new trial.

Appeal allowed.

Queen's Bench Division. Nov. 15, 21. } *In re* FRASER & Co.

Arbitration—Revocation of Submission—Common Law Procedure Act, 1854, *s.* 13.

Appeal from chambers.

Messrs. Ehrensperger & Co. had contracted to sell a cargo of rice to Messrs. Fraser & Co. One of the conditions of the contract was that if any dispute should arise it should be referred to arbitration. The cargo not having been sent, and Messrs. Ehrensperger refusing to deliver it, Messrs. Fraser proceeded on the submission to arbitration, and appointed an arbitrator. Messrs. Ehrensperger declining to submit to the arbitration, Messrs. Fraser gave notice, under section 13 of the Common Law Procedure Act, 1854, that their arbitrator would act as sole arbitrator in the matter. Messrs. Ehrensperger thereupon gave notice that they revoked their submission to arbitration. The arbitrator proceeded *ex parte*, and found Messrs. Fraser & Co. entitled to damages, and, having made the submission a rule of Court, Messrs. Fraser applied to a judge at chambers to enforce the award. The judge declined to accede to the application, and referred the matter to the Court.

Finlay and *R. V. Williams* appeared in support of the application to enforce the award.

W. H. Butler opposed.

Cur. adv. vult.

Nov. 21.—The judgment of the Court (GROVE, J., and MATHEW, J.) was delivered by Mathew, J., refusing the application, on the ground that, in accordance with the authority of *In re Rouse and Meier*, 40 Law J. Rep. C.P. 145, Messrs. Ehrensperger had a right to revoke the submission to arbitration.

Probate, Divorce, and Admiralty Division. Nov. 13. } THE ISIS.

Pleading—Rules of the Supreme Court, 1883—*Order XIX., rules* 5, 6.

This was an action brought in respect of salvage services rendered to the derelict steamship Isis.

The plaintiff had delivered statement of claim, which was in the form given in Appendix C of the new Rules.

Phillimore, for the defendants, moved, under Order XIX., rule 7, for a further and better statement of the nature of the plaintiff's claim.

Aspinall, contrà, admitted that the statement of claim did not give sufficient information, but contended that the proper course was for the defendants to apply for particulars. Rule 5 of Order XIX. distinctly stated that where the forms given in the appendix were applicable, any longer statement would be deemed prolix.

The PRESIDENT (SIR JAMES HANNEN) held that the statement of claim was insufficient, and must be amended. The forms were not intended to be slavishly adhered to, but were given as illustrating the sort of pleading it was desired to introduce. Rule 5 of Order XIX. was specific that the forms were only to be followed when they were 'sufficient.'

Table of Cases.

HOUSE OF LORDS.

House of Lords. July 26, 27, 30, 31, Aug. 2, Nov. 26. } SPEIGHT v. GAUNT.

Trustee—Employment of Broker—Negligence—Loss of Trust Fund—Liability of Trustee.

The plaintiffs appealed from a judgment of the Court of Appeal (reported 52 Law J. Rep. Chanc. 503), which reversed one of Bacon, V.C. (reported 51 Law J. Rep. Chanc. 715).

Millar, Q.C., and *Rigby, Q.C.* (*Stirling* with them), for the appellants.

Hemming, Q.C., and *Davey, Q.C.* (*J. G. Wood* with them) for the respondent.

Cur. adv. vult.

Their LORDSHIPS (EARL OF SELBORNE, L.C., LORD BLACKBURN, LORD WATSON, and LORD FITZGERALD) affirmed the judgment of the Court of Appeal, with costs.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. LINDLEY, L.J. FRY, L.J. [Nov. 22, 23. } COOPER v. THE METROPOLITAN BOARD OF WORKS.

Compensation under Lands Clauses Act—Mortgagor and Mortgagee—Agreement for Personal Compensation.

This was an appeal from a decision of BACON, V.C. (reported *ante* p. 7, where the facts are sufficiently stated), ordering the payment by the defendants of 250*l.*, with interest, to the plaintiff in respect of personal compensation. The question argued on the appeal was whether on the construction of the letters forming the agreement the 250*l.* was to be paid to the plaintiff as personal compensation, or whether it was payable in respect of the goodwill of the business which, it was contended, would be included in the mortgage.

Marten, Q.C., and *Method* for the appellants, the Board of Works.

Hemming, Q.C., and *C. H. Turner* for the respondents.

Marten, Q.C., replied.

Their LORDSHIPS held that, upon the construction of the correspondence, the 250*l.* was to be paid to the plaintiff for personal compensation, and that the same must be paid to him, with interest, from the date of the defendants taking possession of the property.

Court of Appeal. BRETT, M.R. BAGGALLAY, L.J. BOWEN, L.J. Nov. 22, 24. } STOTT v. FAIRLAMB.

Promissory Note Payable on Demand—Agreement to Pay within Three Years—Substitution of Note for Consideration.

Appeal from the judgment of DENMAN, J., on further consideration.

The case is reported, 52 Law J. Rep. Q.B. 420.

Denman, J. gave judgment for the defendant.

The plaintiff appealed.

Wills, Q.C., and *C. Dodd* for the appellant.

Waddy, Q.C., and *Wilberforce* for the defendant.

Their LORDSHIPS reversed the judgment of Denman

J., holding that there was consideration for the promissory note as it was given for a debt existing *in præsenti*, but payable within a certain period, and not only on a fixed day in future; so that the giving the note was conditional payment, and holding also that the case fell within the principle laid down in the Exchequer Chamber in *Currie* v. *Misa* (44 Law J. Rep. Exch. 94).

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
Nov. 28.
In re R. N. CUNNINGHAM & Co.

Practice—Winding up Company—One Order on Two Petitions—Carriage of Order given to Second Petitioner.

Two petitions were presented for winding up this company. The first was a shareholders' and small creditors' petition; the second was a shareholders'.

Mr. Justice BUTT, sitting as vacation judge, made an order on both petitions for winding-up the company, and directed that a meeting should be held of the shareholders for the purpose of determining which of the two petitioners should have the carriage of the order, and directed that the petitioner selected by the majority of the shareholders at this meeting should have the carriage of the order.

The second petitioner was selected, and the first petitioner then appealed from so much of the order as related to the carriage of the order.

Everitt, Q.C., and *E. Ford* for the appellant.

F. C. J. Millar, Q.C., and *S. Brice* for second petitioner.

Bramwell Davis for shareholders.

Their LORDSHIPS held that, although the general rule was to give the carriage of the order to the first petitioner, that rule did not prevent a judge from exercising his discretion, and that this was not a case where the Court of Appeal ought to be asked to interfere with the exercise of such discretion, and dismissed the appeal, with costs.

HIGH COURT OF JUSTICE.

Crown Case Reserved.
Nov. 24.
REGINA *v.* HOLMES.

Coram LORD COLERIDGE, L.C.J., DENMAN, J., HAWKINS, J., WILLIAMS, J., and MATHEW, J.

False Pretences—Venue—Jurisdiction—Letter sent Abroad by Post—Money received from Abroad by Post.

Case reserved by HUDDLESTON, B.

The prisoner was convicted at the Nottingham assizes of obtaining from one Gabet 150*l.* by false pretences.

The prisoner had written at Nottingham a letter containing the pretence, which was proved to be false, and in consequence of which the prosecutor had parted with his money. The letter was posted at Nottingham, and received by the prosecutor at Caudry, in France, from whence a draft for 150*l.* was sent according to and in compliance with the directions of the prisoner contained in his letter. The draft was received by the prisoner at Nottingham, and cashed there.

The question reserved for the opinion of the Court was, whether the prisoner could be indicted and tried for the offence in Nottingham.

No counsel appeared.

HELD, that as the false pretence was made in Nottingham, and the money received there, the prisoner could be tried at the Nottingham assizes.

Conviction affirmed.

Chancery Division.
KAY, J.
Nov. 21.
JAGGER *v.* JAGGER.

Settlement—Trust for Accumulation—Thellusson Act (39 & 40 *Geo. III. c.* 98).

By a post-nuptial settlement Jagger gave his personal estate to trustees upon trust, in the first place to appropriate so much as should be necessary for his own personal maintenance, and subject thereto during the joint lives of himself and his wife, and the life of the survivor, to apply the whole or any part of the annual income for the support of the wife and children, and to accumulate the surplus (if any) so that the accumulations should follow the destination of the principal, with liberty to resort to the accumulations of previous years, and apply the same to the support of the wife and children, and upon the death of the survivor of the husband and wife upon trust for the children as they or the survivor of them should appoint, and in default of appointment amongst the children as therein mentioned.

Jagger died leaving his wife surviving and several children of the marriage, all of whom were under age and had been born before the date of the settlement.

There had been large accumulations of income, and the question was to what extent the trusts for accumulation contained in the settlement were valid, having regard to the provisions of the Thellusson Act.

Kekewich, Q.C., and *Colt*, for the plaintiff, contended that the accumulation was good for twenty-one years from the date of deed or during the minorities of the children, all of whom were *in esse* at the date of deed and at the death of Jagger.

Graham Hastings, Q.C., and *Farwell* for the defendants.

KAY, J., held that the trust for accumulation having arisen at the date of the settlement, the only one of the four terms mentioned in the Thellusson Act which applied was the first—viz. the life of the grantor, and that the trust was, therefore, void as from the date of the death of the settlor.

Chancery Division.
CHITTY, J.
Nov. 26.
LYBBE *v.* HART.

Bankruptcy—Landlord and Tenant—Covenant not to remove Hay and Straw—Disclaimer—56 Geo. III. c. 50, s. 11—Bankruptcy Act, 1869—*Bankruptcy Act*, 1883.

56 Geo. III. c. 50, s. 11, which enacts that no assignee of any bankrupt or of any insolvent debtor's estate shall have any greater right to remove and sell hay and straw or other produce of the farm than the tenant would have, and which so far as it related to an assignee of any insolvent debtor's estate has been repealed by the Statute Law Revision Act, 1873, is not further repealed, either expressly or impliedly, by the Bankruptcy Act, 1869. Therefore a trustee in bankruptcy of a tenant holding under a covenant not to remove the hay and straw, but to consume it on the farm, is not able to

remove and sell even though such trustee may have executed a disclaimer of the lease under section 23 of the Bankruptcy Act, 1869. 56 Geo. III. s. 11 is not repealed by the Bankruptcy Act, 1883.

Macnaghten, Q.C. and *A. à B. Terrell, Cooper Willis, Q.C.* and *H. Fellows*, for the parties.

Chancery Division. NORTH, J. Nov. 21. } DUNN *v.* FLOODS.

Specific Performance—Vendor and Purchaser—Trustee—Depreciatory Condition—Perpetuity—Power to Re-enter.

This was an action brought by vendors of building plots in Reading, who were trustees for persons under disability. The defences were, first, that the conditions of sale, which was by auction, were so depreciatory that the *cestuis que trust* could afterwards repudiate the sale; and, secondly, that a power of re-entry to which the premises were subject had not been referred to in the particulars or conditions of sale which were, therefore, misleading. The power of re-entry had been reserved by covenant with certain brewers, former owners of the property. The covenant provided that the covenantees might enter and hold the premises for three months in case they were used for the sale of beer.

The matters put forward as depreciatory in the conditions were a condition that the title should commence at a recent date; a general reference in one condition to the existence of restrictive covenants when in a later condition the only restrictions were particularly mentioned; and thirdly, a condition making statements and recitals in any abstracted document evidence of the matter stated and received.

Everitt, Q.C., and *McSwinney* for the plaintiffs.

W. W. Karslake, Q.C., and *King* for the defendant.

NORTH, J., held that the power of re-entry was void as a perpetuity; but that the conditions were so depreciatory that the *cestuis que trust* would not be bound by the sale, and, therefore, specific performance could not be enforced.

Queen's Bench Division. Nov. 22. } STRAUSS *v.* THE COUNTY HOTEL AND WINE COMPANY (LIMITED).

Innkeeper's Liability—Statute 26 & 27 Vict. c. 41—Loss of Goods—Refreshment at Hotel—'Guest.'

The question raised in this action was whether the plaintiff was a 'guest' of the defendant, who was an innkeeper, so as to make the latter liable, under 26 & 27 Vict. c. 41, for certain goods belonging to the plaintiff, which had been lost. It appeared that the plaintiff, on alighting from a train, had given the hotel porter his luggage, with the intention of stopping at the hotel. Soon after his arrival at the defendant's hotel the plaintiff changed his mind, and said he should not take a room there, but required some refreshment, upon which he went first of all into the coffee-room, and afterwards by direction of the porter to a refreshment-room at the station, which communicated with the hotel by means of a covered way, and was under the same management. The plaintiff's luggage, which had, meanwhile, at his request, been placed by the hotel porter in a lock-up room for luggage of passengers at the station, was afterwards discovered to be missing. Thereupon the plaintiff brought this action against the defendant, and claimed a right to recover the value of the lost property under 26 & 27 Vict. c. 41, s. 1.

STEPHEN, J., at the trial, directed a nonsuit, on the ground that there was no evidence that the plaintiff had become a guest at the hotel.

Ambrose, Q.C., and *Mattinson*, for the plaintiff, contended that in order to constitute a person a guest at an hotel it was not necessary that he should stay at the hotel, and that the facts proved at the trial were sufficient to make the defendant liable.

E. Page, for the defendant, was not heard.

The COURT (LORD COLERIDGE, L.C.J., and MATHEW, J.) held that no liability attached to the defendant as an innkeeper under 26 & 27 Vict. c. 41, and that the nonsuit was right.

Judgment for defendant.

Queen's Bench Division. (*Magistrates' Case.*) Nov. 23. } SHELLEY (APPELLANT) *v.* BETHELL (RESPONDENT).

Theatres Regulation Act (6 & 7 Vict. c. 68), s. 2—Place of Public Resort—Public Performance of Stage Plays—Private Theatre.

This was an appeal by special case stated by a police magistrate against a conviction under the Theatres Regulation Act (6 & 7 Vict. c. 68, s. 2), of Sir Percy Shelley for having or keeping a house or place of public resort for the public performance of stage plays without a license from the Lord Chamberlain. The facts were that the appellant is owner and occupier of Shelley House, Chelsea, and of a building opposite to it called the Shelley Theatre, fitted up internally as a theatre, though with no place for sale of tickets or collection of money. In December last advertisements appeared that performances would take place at Sir Percy Shelley's theatre in aid of the funds of the School of Dramatic Art on several evenings; 'Tickets 1*l.* 1*s.*, to be procured of the Secretary, School of Dramatic Art.' Over 300 tickets were sold, and the secretary had no instructions to refuse any applicant. The appellant allowed the use of his scenery, and his servants opened and closed the building; he never parted with the possession of the building, but allowed its use, not being paid anything for such use.

Willis Bund for the appellant.

Poland and *B. Coleridge*, in support of the conviction, were not called on.

The COURT (LORD COLERIDGE, L.C.J., and MATHEW, J.) affirmed the conviction. It was impossible to hold that the proprietor of a theatre kept open occasionally for public performances of stage plays was not within section 2. The public were invited to attend the theatre on payment for their tickets.

Queen's Bench Division. Nov. 26. } GREENWAY *v.* BATCHELOR. (ALDRIDGE'S CASE.)

Borough—Burgess Vote—41 & 42 Vict. c. 26, s. 5—45 & 46 Vict. c. 50, s. 31.

Case stated by a revising barrister on appeal from his decision retaining Charles Aldridge on the municipal as well as the Parliamentary list of voters. Aldridge occupied a part of a house as a dwelling, but did not pay the poor-rates, which were paid by the landlord.

R. S. Wright for the appellant.

B. Coleridge for the respondent.

The COURT (LORD COLERIDGE, L.C.J., HAWKINS, J., and MATHEW, J.) held that the municipal and Parliamentary franchises were assimilated in respect of the occupation of part of a house.

Decision affirmed, with costs.

Queen's Bench Division. Nov. 26. } HOWITT *v.* THE NOTTINGHAM AND DISTRICT TRAMWAYS COMPANY (LIMITED).

Tramways, Non-repair of—Road Authority—Tramways Act, 1870 (33 & 34 *Vict. c.* 78), *ss.* 28, 29—*Liability to repair Tram-line—Contract for Repair.*

This was an action brought by the plaintiff to recover damages for injuries sustained in consequence of an accident to his carriage occasioned by the defendants' tramway being out of repair.

On objection taken that the Corporation of Nottingham, the road authority, were liable, and not the tramway company, the County Court judge nonsuited the plaintiff, and a rule was obtained on his behalf to set aside the nonsuit.

By the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28, the obligation of repairing the roadway up to 18 inches on either side of the line is cast on the promoters; and by section 29 power is given to the promoters to contract with the road authority for paving and repairing the road. Under this section an agreement between the defendants and the corporation had been made, by which the latter undertook the reinstating, maintenance, and repair of the streets and roads to the extent mentioned in section 28.

A. Wills, Q.C. (*Weightman* with him) showed cause.

R. T. Wright in support of the rule.

The COURT (LORD COLERIDGE, L.C.J., and MATHEW, J.) discharged the rule, holding that inasmuch as under a Parliamentary power the corporation had contracted with the tramway company to take on themselves the liability to repair, primarily on the company, any neglect of duty occasioning an accident constituted a cause of action against the corporation, and not against the company.

Queen's Bench Division. Nov. 26. } FREEMAN *v.* NEWMAN.

Parliamentary Vote—County Registration—Notice of Objection to Overseers—Error of Date in Notice—Publication—Waiver of Overseers—Statute 6 & 7 *Vict. c.* 18.

This was an appeal from a decision of a revising barrister, whilst holding a Court for the revision of county lists, under the following circumstances:—

It appeared that certain notices of objection which had been served on the overseers were on printed forms which had the year 1880 upon them, and had not been corrected. The barrister held that the notices were defective, and that the parties objected to were entitled to take advantage of the insufficiency of the notices, notwithstanding that they had been published by the overseers.

S. Wortley, in support of the appeal, contended that, inasmuch as the notices given to the parties objected to were in proper form, the overseers were entitled to waive any objection in the form of the notices given to them, assuming such notices to have been invalid by reason of their being misdated.

Mattinson, for the defendant, contended that the requisitions of the statute (6 & 7 Vict. c. 18) had not been complied with, and that the error was one which the barrister had no power to amend, so far as notices to county voters were concerned (as to boroughs, see 41 & 42 Vict. c. 62, s. 28, subs. 2).

The COURT (LORD COLERIDGE, L.C.J., HAWKINS, J., and MATHEW, J.), held that the objection which had been taken to the notices was good, and that the barrister was bound to give effect to it.

Appeal dismissed.

Queen's Bench Division. Nov. 26. } GREENWAY *v.* BATCHELOR. (JACOBS' CASE.)

Parliamentary and Burgess Voters—Divisions I. and II. —Objection—Transfer from one List to another—41 & 42 *Vict. c.* 26, *ss.* 15, 28.

Case stated by a revising barrister on appeal from his decision striking off the name of Jacobs from the list of Parliamentary and municipal voters. The notice of objection was: 'I object to your name being retained on Division I. of the list No. 1 for the parish, &c., of persons entitled to vote at the election of members to serve in Parliament for the borough, &c.' By 41 & 42 Vict. c. 26, s. 15, the lists made out by the overseers are to consist of three divisions: Division I. comprising Parliamentary voters and burgesses, Division II. Parliamentary voters only, Division III. burgesses only. By section 28 the revising barrister is required to place the name in the division in which it should appear according to the result of the division. He expunged the name from Division I., but did not insert it in Division II. on the ground that no proof was given of Jacobs' right to be on that list.

R. S. Wright for the appellant.

B. Coleridge for the respondent.

The COURT (LORD COLERIDGE, L.C.J., HAWKINS, J., and MATHEW, J.) held that the barrister was not bound to place the name in Division II.

Decision affirmed, with costs.

Queen's Bench Division. Nov. 26. } DRUITT *v.* OVERSEERS OF CHRISTCHURCH.

Parliamentary Vote—40*s. Rent-charge 'pur autre vie'— Occupation*—8 *Hen. VI. c.* 7—2 *Wm. IV. c.* 45, *s.* 18 —30 & 31 *Vict. c.* 102, *s.* 5.

Case stated by a revising barrister, on appeal from his decision retaining Arthur Lane on the list of county voters, upon a qualification of a yearly rent-charge of 2*l.* granted by the tenant-for-life of a freehold messuage.

Proof was given of the receipt of the rent-charge within six months of July 31, under 2 Wm. IV. c. 45, s. 26, but it was objected that the voter was not in 'actual occupation' under section 18 of the same Act.

Bosanquet, Q.C., for the appellant.

B. Coleridge for the respondent.

The COURT (LORD COLERIDGE, L.C.J., HAWKINS, J., and MATHEW, J.) held that the rent-charge was not capable of actual occupation, and reversed the decision.

Decision reversed, without costs.

Table of Cases.

HOUSE OF LORDS.

COURT OF APPEAL.

HIGH COURT OF JUSTICE.

HOUSE OF LORDS.

House of Lords. Aug. 2, 3. Nov. 30. } DOBBS *v.* THE GRAND JUNCTION WATERWORKS COMPANY.

Waterworks Company—Water Rate—'Annual Value'—Gross or Rateable Value.

The plaintiff appealed from the decision of the Court of Appeal (reported 52 Law J. Rep. Q.B. 90), which reversed that of the Queen's Bench Division (reported 51 Law J. Rep. Q.B. 501).

Davey, Q.C., and *Webster, Q.C.* (*Sutton* and *Poley* with them) for the appellant.

Sir F. Herschell (*Solicitor-General*) and *Finlay, Q.C.* (*Clerk* with them) for the respondents.

Cur. adv. vult.

Their LORDSHIPS (EARL SELBORNE, L.C., LORD BLACKBURN, LORD WATSON, LORD BRAMWELL, and LORD FITZGERALD) reversed the judgment of the Court of Appeal, and restored that of the Queen's Bench Division, being of opinion that the words 'annual value' in the company's later Act meant net or rateable value, and that the earlier Act was repealed if and so far as the words therein used gave the right to levy rates on gross value.

House of Lords. Nov, 13, 14, 15. Dec. 3. } COOMBER *v.* THE JUSTICES OF BERKS.

Revenue—Property Tax—Assize Courts—Income Tax Acts—Schedules A and B—5 & 6 Vict. c. 35—*16 & 17 Vict. c.* 34.

This was an appeal from the decision of the Court of Appeal (reported 52 Law J. Rep. Q.B. 81) which affirmed one of the Queen's Bench Divison (reported 51 Law J. Rep. Q.B. 297).

Sir H. James (*Attorney-General*) and *Balfour, Q.C.* (*Lord Advocate*), (*Sir F. Herschell* (*Solicitor-General*) and *A. V. Dicey* with them) for the appellant.

H. Matthews, Q.C., and *Gorst, Q.C.* (*H. D. Greene* with them) for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, and LORD BRAMWELL) affirmed the decision of the Court below, with costs.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 15.

In re THE POTTERIES, SHREWSBURY, AND NORTH WALES RAILWAY COMPANY.

Railway — Parliamentary Deposit — Commencement — Construction or Abandonment — Calculation of Deterioration of Property.

A Railway Act authorising an extension of the existing line contained a proviso in the usual form that if the new line was not opened for traffic within five years, the deposit which the company had transferred into Court under the standing orders should be applied, in the first instance, towards compensating landowners whose property had been interfered with, or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway or any portion thereof.

The undertaking was practically abandoned, although no warrant had been obtained under the Railways Abandonment Act.

A petition was presented by persons claiming under the owner of land within the limits of deviation of the proposed new line, praying that the deposit might be applied in making compensation for the injury done to this estate by the commencement, construction, or abandonment of the works.

KAY, J., dismissed the petition, and the petitioners appealed.

Whitehorne, Q.C., and *Willis Bund* for the petitioners.

Stirling for the Crown.

J. Kaye and *Beale* for other respondents.

Their LORDSHIPS held, on the evidence, that the landowner had not been injured by the commencement of the undertaking; but that he was entitled to compensation if there had been any diminution in value of his land by reason of the construction or abandonment of the works, and directed an inquiry as to the amount of diminution in value, and the compensation to be awarded; that, in estimating the diminution of value by the commencement, or the construction, or the abandonment, as the case might be, in each case the compensation to be made was to be ascertained by comparing the value immediately before such commencement, or such construction, or such abandonment, and its value after the happening of any of these three events.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 23.

Ex parte HOLLENDER. *In re* COX.

Bankruptcy — Resolutions for Liquidation — Registration of — Presence of Debtor at Meeting of Creditors — Waiver of Statutory Condition — Creditor's right to Oppose Registration — Formal Defect — Bankruptcy Act, 1869, *ss.* 2, 125, *subs.* 3 — *Bankruptcy Rules*, 1870, *rule* 295.

At the first meeting of the creditors of W. Cox, resolutions were passed for a liquidation. At this meeting the debtor's statement of affairs was produced and read by his solicitor, but he himself was not present in the room, though he was in an adjoining room. A solicitor, who held a proxy for creditors, expressed a wish to examine the debtor, who was accordingly sent for, and came to the door of the room where the meeting was held. Most of the creditors, who, on account of the debtor's age, wished to spare him annoyance, said they did not require his presence, and motioned to him to retire, which he did. The solicitor did not urge his right to examine, but dissented from the resolutions which were passed. On the application to register, he objected that the resolutions ought not to be registered, on the ground that the debtor had not been present at the meeting, as required by section 125, subsection 3, of the Bankruptcy Act, 1869. Notwithstanding this objection, the registrar (Mr. Pepys) made the order for registration, against which the opposing creditors now appealed.

Bigham, Q.C., and *Henry Kisch* for the appellants.

Cooper Willis, Q.C., and *Herbert Reed*, for the debtor, contended, first, that the statute had been substantially complied with; and, secondly, that the appellants, having at the meeting waived the requirements of the statute, were not now in a position to appeal from the registrations.

Their LORDSHIPS (*dissentiente* LINDLEY, L.J.) allowed the appeal. They held that the provisions of the statute must be strictly complied with. The debtor must be present unless validly excused by the meeting. The age of the debtor in this case was not a sufficient cause to justify the meeting in dispensing with his presence. The order of the registrar being wrong, the appellants, as persons aggrieved, were entitled to appeal against it. There could be no waiver by the appellants of the requirements of the statute. Section 82 had no application, because this was a matter of substance, and not merely a formal defect. They gave leave, however, to summon a fresh first meeting, and directed that no act already done by the trustee should be impeached by the trustee in any other liquidation, or in any bankruptcy, without the leave of the Court.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 26, 27.

TAURINE COMPANY (LIMITED), *In re.*

Voluntary Winding up — Subsequent Compulsory Order — Commencement of Winding up — Transfers of Shares — Contributories A and B List — Companies Act, 1862, *s.* 38, *subs.* 1, *ss.* 84, 130, 147.

The company was incorporated in 1874. Towards the end of that year arrangements were on foot for reconstituting the company and obtaining further capital for carrying on the proposed objects by the formation of a new company, to which the assets of the old company were to be transferred.

On December 24, 1874, special resolutions were passed for a voluntary liquidation, with power to transfer the assets to a new company on certain terms.

On January 15, 1875, these resolutions were confirmed.

On December 23, 1874, Beckwith, Robinson, and Marten (since deceased), who were the holders of 1,519 shares in the then existing company, executed transfers of these shares to other persons; and on December 24, but before the holding of the meeting at which the voluntary winding up was resolved upon, the transfers were registered, but there was no evidence whether the deeds of transfer, which ought under the articles to be executed by the transferees as well as the transferors, were so executed.

The new company which was formed was not successful, and it was ordered to be wound up on January 8, 1876.

A petition was afterwards presented in March, 1877, for winding up the old company, on which a compulsory order was made on March 17, 1877. The present appellants, not recovering payment of their debt, applied to remove the liquidator, but BACON, V.C., declined to do so, but gave them leave to use the name of the liquidator in settling a supplementary list of contributories, and under this leave they took out a summons to put the above-named transferors on the list of contributories, either on the A list, on the ground that the transfers having been made immediately before the voluntary winding up and irregularly were invalid; or, in the alternative, on the B list, as past members who had ceased to be members within a year before the commencement of the winding up.

BACON, V.C., dismissed the summons.

The creditors appealed.

A question was raised on the appeal whether one director could be appointed a committee of the board.

Hemming, Q.C., and *Buckley* for the appellants.

Marten, Q.C., and *A. & B. Terrell* for the respondents.

Their LORDSHIPS held that the appellants not having appealed from the refusal to remove the liquidator must be considered as being precisely in the same position as the liquidator, and that they were bound by any *laches* of which the liquidator might have been guilty. Their Lordships further held that where the company was either unable to carry on its business from hopeless insolvency, or had actually transferred its business and assets to another company, so that there was no company, and no shares existed capable of being transferred, the powers of transferring shares were no longer exercisable; but that, under the circumstances of this case, the transfers having been acted upon for so long, and the transferees having been put on the list of contributories, must, even although there may have been irregularities connected with the execution, be treated as valid; and the transferees were therefore not liable to be put on the A list.

With regard to the B list, held by LINDLEY, L.J., and FRY, L.J. (*dissentiente* COTTON, L.J.) that the case of a voluntary winding up being followed by a compulsory winding up not being provided for by the Act of 1862, the commencement of the winding up must be held to be not the date of the passing of the confirmatory resolutions for the voluntary winding up, but the date of the presentation of the petition for the compulsory winding up; and that, consequently, the transferees did not come within section 38, subsection 1, of the Companies Act, 1862. Their Lordships also held that a single director could be appointed a committee of the board, if the articles authorised such appointment.

Court of Appeal.
BRETT, M.R.
BAGGALLAY, L.J.
BOWEN, L.J.
Nov. 28.

DAVEY *v.* THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

Negligence—Railway Company—Accident—Level Crossing.

Appeal by plaintiff from a decision of the Divisional Court, discharging a rule for a new trial.

The case is reported 52 Law J. Rep. Q.B. 665.

Kemp, Q.C., and *C. Dodd* for the plaintiff.

Murphy, Q.C., and *Arbuthnot* for the defendants.

Their LORDSHIPS (BRETT, M.R., and BOWEN, L.J.; BAGGALLAY, L.J., *dissentiente*) affirmed the decision of the Divisional Court.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 30.

Ex parte EVANS. *In re* EVANS.

Bankruptcy Petition—Stay of Proceedings—Security—Amount—Bankruptcy Act, 1869, *s.* 9—*Rules of* 1870, *rules* 158 *to* 165—*Forms of* 1870, *forms* 18 *and* 19.

This was an appeal from a decision of BACON, C.J.

In May, 1883, the debtor, Evans, was indebted to a stockbroker named Montefiore to the amount of 1,413*l.* 16*s.* 4*d.* in respect of Stock Exchange transactions.

On June 19, 1883, Evans gave Montefiore two promissory notes for 250*l.* each, falling due on June 30 and July 13 respectively. The debtor failed to pay the first of these notes at maturity, and on July 12 Montefiore issued a debtor's summons against him for 250*l.*, the consideration being stated to be 'a part payment of and on account of the sum of 1,413*l.* 16*s.* 4*d.*' due from him to Montefiore.

The debtor's summons was not complied with, nor was the second promissory note met when due, and accordingly Montefiore filed a bankruptcy petition against the debtor. At the hearing of this petition, the debtor disputed the validity of the debt, and was ordered by the registrar of the Manchester County Court to give security to the amount of 1,000*l.* or, in default, to be adjudicated bankrupt. Having failed to give the required security, he was on August 29 adjudicated bankrupt in the petition. On appeal to the Chief Judge the two orders were affirmed. The debtor now appealed.

Sidney Woolf, for the appellant, contended that, upon the construction of section 9 of the Bankruptcy Act, and rules 158 to 165 of the Bankruptcy Rules, 1870, and forms 18 and 19 of the Bankruptcy Forms, 1870, it was never intended that the Court should order security to be given for a larger amount than that actually in dispute, and that in this case, at the time of the filing of the petition, 250*l.* was all that was in dispute.

Cooper Willis, Q.C., and *Horace Browne*, for the respondent, were not heard.

Their LORDSHIPS dismissed the appeal, being of opinion that the Court might, under section 9, require security for any sum, and that there was nothing in the Act or Rules to confine the amount of the security to the amount of the debt actually in dispute.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 30, Dec. 1.

Ex parte FEWINGS.
In re SNEYD.

Bankruptcy—Liquidation—Statement of Affairs—Debt not correctly stated — Mortgage — Covenant to pay Interest — Judgment — Merger — Rate of Interest — Bankruptcy Act, 1869, *s.* 126.

This was an appeal by the debtor, Sneyd, and the trustee in his liquidation from a decision of BACON, C.J.,

reported 52 Law J. Rep. Chanc. 724, where the facts are stated.

Romer, Q.C., and *Bernard Coleridge* for the appellants.

Winslow, Q.C., and *Macaskie* for the respondents.

Their LORDSHIPS reversed the decision of Bacon, C.J. They were of opinion that, upon the correct construction of the mortgage deed, the covenant was to pay interest at 5 per cent. so long as the 2,200*l.* was due upon the covenant to pay the principal sum; that that covenant was now merged in the judgment; and that, consequently, the subsidiary covenant to pay interest was gone with it. The debt, therefore, must be taken to have been correctly stated in the debtor's statement of affairs, with interest at 4 per cent, since the date of the judgment; and, consequently, the order of the County Court judge restraining the proceedings under the writ of sequestration must be restored.

FRY, L.J., referred to *Popple* v. *Sylvester*, 52 Law J. Rep. Chanc. 54; L. R. 22 Chanc. Div. 98, as an instance of the manner in which a covenant might be framed for payment of interest at a certain rate so long as the principal sum remained due upon the mortgage or otherwise.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Nov. 17, 19.
Dec. 4.

In re THE COLUMBIA CHEMICAL FACTORY, MANURE AND PHOSPHATE WORKS (LIMITED). SIR W. BRETT'S CASE. HEWETT'S CASE.

Company—Winding-up—Directors—Qualification Shares—Reasonable Time—List of Contributories.

The company was incorporated on June 17, 1879. Brett and Hewett each signed the memorandum of association for one share, and also signed the articles of association. By the articles it was provided that Brett and Hewett and others should be the first directors of the company; that the qualification of directors should be the holding of shares of the value of 500*l.*, on which all calls had been paid; and that the office of director should be vacated if the director ceased to hold his qualification.

Both Brett and Hewett accepted the office of director. Brett attended two meetings, and then resigned. Hewett continued to act as director until the voluntary winding up of the company. Neither of them applied for any shares in the company, and no shares, except those for which they signed the memorandum, were allotted to either of them or treated in the books as belonging to them. In November, 1879, a resolution was passed for the voluntary winding up of the company. In January, 1880, an order was made for the compulsory winding up of the company.

The liquidator applied to the Court to have Brett and Hewett placed on the list of contributories for the number of shares necessary for the qualification of a director. The application was refused by KAY, J. The decision in *Brett's Case* is reported *ante*, p. 3.

The liquidator appealed from this decision.

W. Pearson, Q.C., and *E. S. Ford* for the liquidator.

Graham Hastings, Q.C., and *Brooksbank* for Brett.

Higgins, Q.C., and *Vernon R. Smith* for Hewett.

E. S. Ford replied.

Cur. adv. vult.

December 4.—Their LORDSHIPS held that the contract by the directors under the articles to acquire the necessary qualification, whatever else its effect was as regards section 23 of the Companies Act, 1862 (upon which they expressed no opinion), must be to do so within a reasonable time; and that, under the circumstances of the case, a reasonable time for completing the contract had not elapsed before the company was wound up; and that neither Brett nor Hewett could be held contributories in respect of any shares except those for which they signed the memorandum.

Appeal dismissed, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Dec. 1.

In re THE ZOEDONE COMPANY (LIMITED).

Company—Voluntary Liquidation—Supervision Order—Wishes of Shareholders—Claims against Company—Companies Act, 1862 (25 & 26 *Vict. c.* 89), *ss.* 138, 147, 149.

In February, 1882, the Zoedone Company went into voluntary liquidation for the purpose of transferring its assets and liabilities to a new company, bearing the same name, but having an extended memorandum of association. The new company was formed and took over the assets and liabilities accordingly, and was now carrying on business. The old company had ceased to carry on business, but the liquidator of the old company denied that the liquidation was at an end, and now (on November 14, 1883) presented a petition for continuing the voluntary liquidation under supervision. He alleged that questions had arisen in regard to the winding up of the company and mode of working out the same, and as to the carrying out of the contracts for sale of the property and the assets of the company, and the satisfaction of its liabilities. It appeared that on October 25, 1883, the liquidator had received a letter from the official liquidator of the 'French Zoedone Company,' impeaching a certain sale of the company's patent to the French company, and claiming repayment of 5,000*l.* cash, and the value of 15,000 shares, which was the consideration given by the French company for the purchase.

Marten, Q.C., and *Latham* for the petitioner.

Hemming, Q.C., and *Oswald*, for the company, supported the petition.

Israel Davis and *Welby King*, for shareholders, supporting the petition.

Horton Smith, Q.C., and *W. D. Rawlins*, for one-third in value of the shareholders, opposed, and relied on sections 149 and 138.

Marten replied.

BACON, V.C., said it was contended that there was no occasion for a supervision order since the liquidator could obtain all he wanted under section 138, and that no doubt was so in respect of 'any question arising in the matter of such winding-up;' but the claim made against the old company in this case was a matter outside the winding-up; and looking to the nature of that claim and to the fact that if a supervision order was made, proceedings in respect of the claim could only be brought with the sanction of the Court (sections 141 and 87), he was of opinion that the liquidator was entitled to the supervision order for the protection of the company. His lordship accordingly ordered the voluntary liquidation to be continued under the supervision of the Court.

Chancery Division. Bacon, V.C. Dec. 1. } *Re* Garnett-Orme and Hargreaves.

Settlement of Personalty—Covenant to settle After-acquired Property—Real Estate—Implied Power of Sale—Number of Trustees—Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *s.* 2, *subs.* 8, *s.* 39.

By Mrs. Gandy's marriage settlement, dated September 27, 1859, a sum of 10,000*l.*, secured by mortgage, was settled, and the investment clause empowered the trustees or trustee to continue the said sum of 10,000*l.* in its present state of investment, or with the consent in writing of the husband and wife or the survivor of them, or, after the death of the survivor, at the proper authority of the trustees or trustee, 'to call in the said principal moneys, and again lay out and invest' the same in the securities authorised, with power for the trustees for the time being to vary and transfer the same. The settlement also contained a covenant to settle after-acquired real or personal property 'upon the same trusts, and for the same intents and purposes, and subject to the same powers, provisoes, and agreements as were thereinbefore declared of the said sum of 10,000*l.*, or as near thereto as the nature of the case would permit.' There were originally two trustees of this settlement, one of whom was since dead.

Mrs. Gandy and her sister, Mrs. Garnett-Orme (whose marriage settlement, made in 1860, contained very similar provisions), became entitled in 1879 to real estate as co-heiresses, which was subject to the covenants to settle after-acquired property, but which had not been assured to the trustees. As tenants for life they had since contracted to sell this real estate under the Settled Land Act, 1882; and the purchaser raised two objections: (1) That the trustees had no power of sale over real estate under the settlements, and therefore were not trustees within the meaning of the Act (section 2, subsection 8); and (2) that the sole trustee of Mrs. Gandy's settlement could not in any case give a valid receipt for the purchase-money, having regard to section 39.

This was a summons under the Vendors and Purchasers Act, 1874, to decide these points.

Wolstenholme for the vendors.

Hamilton Humphreys for the purchaser.

Bacon, V.C., overruled both objections, and decided in favour of the vendors, but without giving any costs.

Chancery Division. Kay, J. Nov. 16. } *Ex parte* The Carpenters' Company. In the Matter of the Great Eastern Railway Act, 1882.

Practice—Purchase-money in Court in respect of Lands taken from a Corporation—Payment out to Corporation—Lands Clauses Consolidation Act, 1845, *s.* 69.

This was a petition presented by the Carpenters' Company for the payment out of Court of the sum of 4,050*l.*, which had been paid in by the railway company under the provisions of the Lands Clauses Consolidation Act, 1845, in respect of lands taken by them. The money stood to an account entitled '*Ex parte* the Great Eastern Railway Company. In the matter of the Great Eastern Railway Act, 1882, in respect of land belonging to the Carpenters' Company, a corporation without power of sale.' By section 69 of the Lands Clauses Act it is provided that the purchase-money of land taken or purchased from any corporation shall be paid into Court, and it is directed that the same may be paid out to 'any party becoming absolutely entitled to such money.' The Carpenters were absolutely entitled to the land at the time of the purchase, but they had no express power of sale. The question now raised was whether they came within the words 'becoming absolutely entitled.'

Shebbeare for the Carpenters' Company.

Stevenson Moore for the railway company.

Kay, J., made an order for the payment out of the fund as prayed.

Chancery Division. Kay, J. Nov. 12, 13, 28. } Esdaile *v.* Payne.

Tithes—Limitation of Action—Tithes in Kind—37 Hen. VIII. c. 12—*Non-payment for more than Thirty Years —2 & 3 Wm. IV. c.* 100.

This was an action by the owner of the tithes of the rectory of St. Botolph without Aldgate to recover tithes of certain of the rectory lands within the city of London and the liberties thereof. By the statute 37 Hen. VIII. c. 12, a yearly money payment of 2*s.* 9*d.* in the pound was substituted for the tithes theretofore payable in the city of London and its liberties. There was no evidence that the payments which existed at the time of that statute were ever anything but money payments. It was admitted that no payment whatever had been made for tithe in respect of the lands in question for a period of far more than the thirty years mentioned in 2 & 3 Wm. IV. c. 100. That Act in terms applies only to tithes in kind; and the question, therefore, was whether or not the yearly payments under 37 Hen. VIII. c. 12, were in the nature of tithes in kind so as to be within the protection of the 2 & 3 Wm. IV. c. 100.

Graham Hastings, Q.C., and *Maclean* for the plaintiff.

W. Pearson, Q.C., and *Sir A. Watson, Rigby, Q.C.*, and *Jolliffe*, and *J. Henderson* and *A. H. Spokes* for the defendants.

Kay, J., held that the contention that the payments must be treated as tithes in kind ought to prevail, as the burden of showing that they were anything else rested upon the plaintiff, and had not been discharged.

Action dismissed, with costs.

Chancery Division. Kay, J. Nov. 24, 28. } *In re* Luddy. Peard *v.* Morton.

Will—Construction—Gift over—Direction to Convey to A. absolutely—Gift over on Death of A. leaving children.

A testatrix, who died in 1876, by her will dated in 1872, devised all her real and personal estate to trustees upon trust to pay debts and annuities, and 'as to all the residue . . . to convey, assign, or otherwise assure the same unto, and to the use of,' her son, 'his heirs, executors, and assigns absolutely; and if my said son shall marry, and shall die leaving children of such marriage who shall live to attain the age of twenty-one years,' then to convey to such children, 'but if my said son shall die in my lifetime without leaving a child or children him surviving, then' over. The son survived the testatrix and had children. The question was what interest he took under the will.

Graham Hastings, Q.C., and *William King* for the plaintiff.

W. Pearson, Q.C., and *Northmore Lawrence* for the defendants, the trustees, and infant children of the son.

KAY, J., held that the words 'die leaving children' must be construed as referring to death in the lifetime of the testatrix, and that, therefore, the son having survived her, became absolutely entitled.

Chancery Division. KAY, J. Nov. 29. } SMALLEY *v.* SMALLEY.

Will—Construction—Gift of 'all my Personal Property,' followed by Enumeration of Particulars including Real Estate.

A testator, who died in 1881, by his will dated in 1875, gave and devised to his wife 'all my personal property wherewith it has pleased God to bless me—that is, my freehold land and two cottages' (describing them), 'and also my five leasehold houses' (describing them), —for her life, and appointed his wife 'sole executor of the same.' Subsequently to his decease the testator acquired other freeholds. He was also entitled to personal property other than leasehold houses.

Rawson for the plaintiff.

Townsend for the defendant.

KAY, J., held that all the real and personal property of the testator passed by the will, including the property subsequently acquired. The term 'personal property' was evidently not used by the testator in a technical sense, but was meant to include all property of every description. This general gift ought not to be cut down by the subsequent enumeration of particulars. See *King* v. *George* (46 Law J. Rep. Chanc. 670; L. R. 5 Chanc. Div. 627).

Chancery Division. CHITTY, J. Nov. 24. } PERKS *v.* GILLOTT.

Taxation — Signature of Counsel—Rules of Supreme Court, 1883, Order LXV., rule 52.

Order LXV., rule 52, of the Rules of 1883, which provides that no fee to counsel shall be allowed on taxation unless vouched by his signature, is not retrospective.

W. S. Owen was the counsel appearing.

Chancery Division. CHITTY, J. Nov. 26. } *In re* DENHAM & Co.

Company—Director—Liability for Frauds of Co-Director —Dividends paid out of Capital—Misfeasance—Companies Act, 1862, s. 165.

Where by the articles of association of a company plenipotentiary powers, comprising the issue of balance sheets and reports, and *in totidem verbis* the supreme control of the whole management of the affairs of the company, were conferred upon a single director, and by the frauds of this director large sums out of capital were paid as dividends. Held, that an innocent director was not liable either in respect of the whole sum wrongfully paid or in respect of any portion of such sum which he himself had received, notwithstanding that he had been guilty of a degree of negligence.

Davey, Q.C., Ince, Q.C., Macnaghten, Q.C., Romer, Q.C., Bardswell, Hull, A. Young, and *W. Baker* for the parties.

Chancery Division. CHITTY, J. Nov. 30. } *In re* THE GREY'S BREWERY COMPANY (LIMITED).

Company—Winding-up—Examination by Official Liquidator—Right of Creditors to attend—Companies Act, 1862, s. 115; General Orders, 1862, rules 60, 62.

Creditors in a winding-up whose debts have been allowed, cannot without special leave attend an examination by the official liquidator under section 115 of the Companies Act, 1862. Such examination is for the purposes of obtaining information to be used by the official liquidator in the winding-up.

In re The Empire Assurance Corporation, 17 L. T. (N.S.) 488, discussed.

Ince, Q.C., Romer, Q.C., Greenwood, Beddall, and *Bramwell Davis* for the parties.

Chancery Division. CHITTY, J. Dec. 3. } SAWYER *v.* SAWYER.

Practice—Contribution between Trustees—Rules of Supreme Court, 1883, Order XVI., rule 55.

The attention of the Court having been directed to Rules of Court, 1883, Order XVI., rule 55, this case, noted above, p. 120, was ordered to be re-argued.

Jolliffe, Langley, and *McSwinney* for the parties.

CHITTY, J., held that, having regard to the above order, the Court had power to give a direction for an inquiry in what proportion co-trustees, who had been in an action for the execution of the trusts, held liable jointly and severally for a sum representing losses to the trust fund, should contribute to make good such sum. *Butler* v. *Butler*, 49 Law J. Rep. Chanc. 734; L. R. 14 Chanc. Div. 329, followed.

Chancery Division. CHITTY, J. Dec. 3. } *In re* THE MAIDSTONE AND ASHFORD RAILWAY COMPANY. *In re* THE BALA AND FESTINIOG RAILWAY COMPANY.

Practice—Proceedings in Chambers—Payment out of Court—Lands Clauses Consolidation Act, 1845—Sums not exceeding 1,000l.—Petition on Summons—Rules of Court, 1883—Order LV., rule 2, subs. 2, 7.

Rules of the Supreme Court, 1883, Order LV., rule 2, subsection 2, comprises applications for payment out of sums paid into Court under the Lands Clauses Consolidation Act, 1845; therefore, when such sums do not exceed 1,000*l.*, such applications should be by summons in chambers, and not by petition.

W. Leigh Pemberton and *Medd* for the parties.

CHITTY, J., with reference to the above decision, stated that in consequence of the case of *In re Calton's Will* (*ante*, p. 121), he had spoken to Pearson, J., upon the present point, and had been informed by that learned judge that the order was made on the petition in that case without much discussion, and under the misconception that he was following a decision of Kay, J. The case, however, had been ordered to be placed on the paper to be re-argued. His Lordship finally stated that Kay, J., had intimated to him that he had adopted his (Chitty, J.'s) view that the course of proceedings in such cases should now be by summons in chambers, and not by petition.

Chancery Division. North, J. Nov. 22. } FARRAR *v.* LACEY.

Mortgage—Sale—Negligence—Deposit.

This was an action to foreclose leasehold manufacturing property.

It had been put up for sale by auction and knocked down to a person not known to the auctioneer, from whom the auctioneer accepted a cheque for 1,000*l.* in payment of the deposit. The purchaser turned out to be a man of straw, the cheque was dishonoured, and the sale went off. The defendants in the action objected to the plaintiff adding the costs of the abortive sale to his security.

Barber, Q.C., and *F. Lewin* for the plaintiff.

E. B. Cooper, C. Maclaren, and *Fossett Lock* for the defendants.

NORTH, J., held that the plaintiff had been guilty of no negligence, and allowed the costs of the abortive sale in taking the account.

Chancery Division. Pearson, J. Nov. 21. } *In re* RICHARDS. WILLIAMS *v.* GOWIN.

Will—Construction—Absolute Gift followed by Restrictive Words.

The testator in this case gave certain property absolutely to A., and in a later part of the will again referred to the same property, and settled it on A.'s children after her death. A. having died without children, the question arose whether her representatives were or were not entitled to the property by virtue of the original absolute gift to A., and the failure of the subsequent gift to the children.

Cookson, Q.C., Everitt, Q.C., and *Wolstenholme, Cozens Hardy, Q.C.*, and *Buckley*, and *Creed* appeared for the parties.

PEARSON, J., said that where there is in a will an absolute gift of property to A., followed by words modifying for his benefit the mode of enjoyment by him of the property, and circumstances arise which prevent the possibility of giving effect to those modifications, the absolute gift remains and A. takes the property free from the modifications; but where there is an absolute gift to A., followed by words cutting it down and giving a benefit to B., and circumstances arise which prevent the possibility of giving effect to the gift to B., the absolute gift to A. does not remain, but he takes the property for such an interest only as is left to him by the restrictive words; and he held that the case before him fell within the last class of cases, and that A.'s interest having been cut down to a life interest for the benefit of her children, her personal representatives took no interest in the property upon her death without leaving children.

Chancery Division. Pearson, J. Nov. 23. } NELSON *v.* PASTORINO.

Practice—Rules of 1883, *Order IX., rule* 6; *Order XII., rule* 15; *Order LXX., rule* 1—*Writ—Service out of Jurisdiction—Substituted Service—Appearance by Firm.*

The plaintiff in this action served the writ upon the principal defendants, Pastorino & Co., by serving it upon a person who was not one of the partners in the firm, nor a person having the control or management of the partnership business at the principal place where it was carried on, but who held a power of attorney from an earlier firm, which had been dissolved by the death of one of the partners, and had been replaced by Pastorino & Co., consisting of all the partners in the former firm, except the one who had died. The firm entered a conditional appearance in the firm's name, and moved to discharge the service of the writ, as having been irregular, under Order IX., rule 6. The plaintiff submitted that the service was good; but, if not, then that, under Order LXX., rule 1, the slip was not fatal, but that leave should be given for substituted service, the defendants being out of the jurisdiction; and, further, that the defendants, not having appeared rightly under Order XII., rule 15, they could not be heard to object to the service. The defendant firm offered by their counsel to undertake to appear in the names of the individual partners.

Glasse, Q.C., and *Northmore Lawrence* for Pastorino & Co.

S. Brice (*Cozens Hardy, Q.C.*, with him) for the plaintiff.

PEARSON, J., said that Pastorino & Co. had appeared irregularly, but that the irregularity had been caused by the undertaking offered, and that they were, therefore, in a position to move. Then, as to the service of the writ, that had not been served upon a partner, within Order IX., rule 6; nor, even assuming that it had been served at the principal place of business of the firm, which was not clear, had it been served upon a person having the control or management there, within the same rule, for it had been served upon a person who had no power to act for the new firm, but only for the old one. The defendants, though out of the jurisdiction, were perfectly accessible, and the proper course was to obtain leave to serve them out of the jurisdiction, and he could, therefore, give no leave for substituted service, which could only be allowed where the defendant was not easily accessible. The service must be discharged, with costs.

Chancery Division. Pearson, J. Nov. 23. } ROLLS *v.* MILLER.

Covenant in Lease—Not to carry on 'Trade or Business'—Meaning of Word 'Business'—Charitable Institution—No Profits made.

The lessee for twenty years, from 1825, of No. 13 The Paragon, New Kent Road, under a lease which contained a lessee's covenant not to permit to be carried on upon the premises 'any trade or business of any description whatsoever' without the lessor's written consent, sublet the house for twenty-one years to the trustees of the 'Homes for Working Girls in London,' and the latter proceeded to prepare the house for the purposes of one of their Homes. The Homes were carried on for the purpose of providing homes for working girls who had no homes of their own available, and though fixed charges were made for rent of rooms and meals, these charges were insufficient to meet the expenses, the deficiency being made up by subscriptions.

The lessor moved for an injunction to restrain the lessee and sub-lessees from using the house as one of the Homes, or otherwise using it in breach of the covenant in the lease.

Cozens Hardy, Q.C., and *Butcher* for the plaintiff.
Oswald and *M'Cullagh* for the lessee.
W. W. Karslake, Q.C., and *Birrell* for the sub-lessees.

PEARSON, J., said that the question was whether the sub-lessees were carrying on a 'business,' because, if that were the case, it would be immaterial whether it was carried on for a profit or not. The word was larger than 'trade,' and was intended to include occupations not covered by that word. The carrying on the work of the charity was a work in which people sedulously occupied themselves, which might be an ordinary business, and would be an ordinary business if carried on by an individual for profit. A business was a business whether it was carried on for profit or for charitable purposes only, and the defendants were therefore acting in breach of the covenant, and must be restrained by injunction.

Chancery Division. PEARSON, J. Nov. 30. } *In re* RIVIERE & CO.'S TRADE-MARK.

Trade-marks Registration Act, 1875, *s.* 5—*Rectification of Register—No User or Intended User of Mark in England—'Persons aggrieved.'*

Motion to rectify the register of trade-marks by striking out the name of Riviere & Co., and inserting the name of M'Dowell & Co. as proprietors of a trade-mark registered in the former name.

Riviere & Co. were brandy merchants of Cognac in France, and London, and M'Dowell & Co. were wine and spirit merchants of Madras, and the ground of the application was that Riviere & Co. had fraudulently registered as theirs a trade-mark which belonged to M'Dowell & Co., and of which they had undertaken to obtain the registration on behalf of the latter. The facts were not gone into.

Willis Bund for the motion.

Cozens Hardy, Q.C. (*Bradford* with him), for Riviere & Co., took the preliminary objection that, inasmuch as the applicants had not stated that they had used, or ever intended to use, the trade-mark in question in England, they were not 'persons aggrieved' within section 5 of the Trade-marks Registration Act, 1875.

Stirling appeared for the registrar of trade-marks.

PEARSON, J., said that the objection must prevail. The Trade-marks Registration Acts were not passed for the benefit of persons who did not trade or intend to trade in England; and as the applicants only carried on business in India, and were not even intending to do so in England, they were not persons aggrieved, and the application must fail because the applicants were not persons who had a right to make it.

Queen's Bench Division. Nov. 30. } CARTER *v.* DRYSDALE AND OTHERS.

Employers' Liability Act, 1880 (43 & 44 *Vict. c.* 42), *s.* 7—*Notice of Injury—Omission of Date—'Defect or Inaccuracy'—Defendant not prejudiced.*

Motion on appeal from a County Court judge in an action under the Employers' Liability Act, 1880. The notice of injury given under section 4 did not state the date of the injury as required by section 7. The County Court judge was of opinion, in the terms of the last paragraph of section 7, that the defendants were not prejudiced in their defence by the omission of the date, as that fact had been communicated to them by letter. He, however, held the notice insufficient on the authority of *Keen* v. *The Millwall Dock Company*, 51 Law J. Rep. Q.B. 277; L. R. 8 Q.B. Div. 482.

B. Muir for the defendants.

Poley for the plaintiff.

The COURT (LORD COLERIDGE, L.C.J., and MATHEW, J.) held that the omission of the date was a 'defect or inaccuracy' within section 7, and was covered by the finding of the County Court judge.

Appeal allowed.

Queen's Bench Division. Nov. 26. Dec. 1. } LENDERS *v.* ANDERSON.

Practice—Writ, Service of, out of the Jurisdiction—Action for Breach of Contract—Defendant Domiciled in Scotland or Ireland—Order XI., rules 1 (*e*) *and* 2.

This was an application to the judge at chambers, and referred by him to the Court, made under Order XII., rule 30, by the defendant, who was domiciled in Scotland, to set aside the service out of the jurisdiction upon him in that country of a writ in an action for breach of contract within the jurisdiction. Leave had been granted on an *ex parte* application, supported by affidavit according to the practice under the Rules of 1875, and the question was, whether such leave could be granted under the provisions of the new Rules, Order XI.

Finlay, Q.C., and *Nicoll* for the defendant.

Gorell Barnes for the plaintiff.

Cur. adv. vult.

December 1.—The COURT (GROVE, J., and HUDDLESTON, B.) set aside the service, holding that the words 'unless the defendant is domiciled or ordinarily resident in Scotland or Ireland' occurring in Order XI., rule 1 (*e*), have taken away the power to allow such service out of the jurisdiction in action for breach of contract where the person sought to be served comes within that description.

Queen's Bench Division. Dec. 4. } THE SWANSEA CO-OPERATIVE BUILDING SOCIETY *v.* DAVIES.

*Practice—Remitted Action—Trial by Judge without Jury—*19 *&* 20 *Vict. c.* 108, *s.* 26—*Order XXXIX., rule* 1.

Motion for a new trial in an action remitted to the County Court, under 19 & 20 Vict. c. 108, s. 26, and tried by the County Court judge without a jury. The preliminary objection was taken that under Order XXXIX., rule 1, of the Rules of the Supreme Court, 1883, the application ought to be to the Court of Appeal.

Cruikshank for the plaintiffs.

A. Cross for the defendant.

The COURT (DAY, J., and SMITH, J.) held that the practice as settled by *London* v. *Roffey*, 47 Law J. Rep. Q.B. 16, and *Davis* v. *Godbehere*, 48 Law J. Rep. Exch. 440, is unaffected by the alteration in the wording of the new Rules.

Objection overruled.

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Re HARDWICK.

Appeal—Jurisdiction of Court—Order of High Court striking Solicitor off the Rolls—Criminal Cause or Matter—Judicature Act, 1873 (36 & 37 *Vict. c.* 66), *s.* 47.

Appeal by a solicitor from an order of the Queen's Bench Division, striking him off the rolls.

Wills, Q.C., and *Hollams*, for the Incorporated Law Society, took the preliminary objection that the appeal was from a judge in a criminal cause or matter, and therefore that by section 47 of the Judicature Act, 1873, no appeal lay.

Powell, Q.C., and *A. Powell*, for the solicitor, were not called on.

Their LORDSHIPS held that the order was made by the Queen's Bench Division in the exercise of its disciplinary jurisdiction over one of its officers, and not in a criminal cause or matter, and therefore that the order could be the subject of an appeal. The appeal was then heard, and dismissed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 8, 10, 11.

CARTER *v.* WHITE.

Bill of Exchange—Acceptance in Blank—Filling in Name of Drawer—Death of Acceptor—Authority to complete.

The plaintiff was the trustee in bankruptcy of Noble, who in November, 1874, deposited certain securities with Sir Thomas White as a collateral security for a debt owing from Randle to White, in respect of which Randle had signed and delivered to White two acceptances, complete in form, with the exception of the

drawer's name. Randle died in 1875. The acceptances were never filled in with the drawer's name, and they were never presented for payment. The plaintiff claimed to be relieved from his suretyship by reason of White having neglected to perfect the bills of exhange.

Mr. Justice Kay held (51 Law J. Rep. Chanc. 465; L. R. 20 Chanc. Div. 225) that a person to whom an acceptance blank as to drawer's name is delivered for value, can complete the bill by filling in his own name as drawer, even after the acceptor's death, and dismissed the action, so far as it sought relief from the suretyship, with costs.

The plaintiff appealed from this decision.

Higgins, Q.C., and *Bradford* in support of the appeal.

Rigby, Q.C., and *Shebbeare*, for the respondents, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 12.

Re KNIGHT. KNIGHT *v.* GARDNER.

Practice—Affidavit Evidence—Notice to Cross-examine—Costs of Production of Witness—Rules of Court, 1875, *Order XXXVIII., rule 4.*

This was an appeal from a decision of BACON, V.C., reported *ante* p. 106, where he held that Order XXXVIII., rule 4, of the Rules of Court, 1875, applied to all proceedings, whether at the trial of the action or elsewhere.

Method and *E. Jennings* for the appellants.

Marten, Q.C., and *Stephens* for the respondents.

Their LORDSHIPS reversed the decision of the Vice-Chancellor, holding that Order XXXVIII., rule 4, only applied to the production of deponents before the Court at the trial of the action, when there had been an agreement that the evidence should be taken by affidavit.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
Dec. 8.

Re MADGWICK. *Ex parte* THE DIDCOT RAILWAY COMPANY.

Practice—Payment out of Court—Lands Clauses Act, 1845—*Sum not exceeding* 1,000*l.*—*Petition or Summons—Rules of Court*, 1883, *Order LV., rules* 2, 7.

This was a summons for payment out of a sum less than 1,000*l.*, where the chief clerk had doubted whether, as payment out was not provided for by Order LV., rule 2, subs. 7, the application ought not to be by petition.

Herbert Lake for the summons.

BACON, V.C., said subsection 2 was intended to include all applications where the fund was less than 1,000*l.* not otherwise specially provided for in the subsequent subsections of Order LV., rule 2, and accordingly made the order on summons, and directed the summons to be sealed by the company.

Chancery Division.
BACON, V.C.
Dec. 8.

Re BRANDRAM.

Practice—Proceedings in Chambers—Payment out of Court—Lands Clauses Consolidation Act, 1845—*Sum exceeding* 1,000*l.*—*Petition on Summons—Rules of Court*, 1883, *Order LV., rules* 1, 7.

This was a summons for the payment out of Court of a sum of 1,666*l.* 13*s.* 4*d.* Consols, part of a larger sum of Consols produced from moneys paid in by the Metropolitan Board of Works under the Lands Clauses Act in 1865, and which by an order made on petition on February 22, 1866, had been carried over to a separate account, 'the account of the contingent annuities of C. S. E. and L. Brandram, under the will of Thomas Brandram, deceased,' to provide for four life annuities of 50*l.* each. On the death of one of the annuitants, a portion of this sum had, by an order made on petition, dated March 26, 1870, been paid out to the present applicants. Another annuitant had recently died, and the question was now raised, having regard to *Re Calton's Will*, L. J. Notes of Cases, Nov. 24, p. 121, and *Re The Maidstone and Ashford Railway Company*, L. J. Notes of Cases, Dec. 8, p. 134, whether the application should be made by petition or summons.

Millar, Q.C., for the summons.

F. Pownall for the Board of Works.

BACON, V.C., held that the rights of the parties having been already declared by the previous orders on petition, the case depended only on proof of the death of the annuitant, and was therefore directly within Order LV., rule 2, subs. 1, which was in no way controlled or modified by subsection 7. The application was rightly made by summons.

Chancery Division.
PEARSON, J.
Dec. 7.

TILLETT *v.* NIXON.

Mortgage — Foreclosure Action — Receiver — Judicature Act, 1873, *s.* 25, *subs.* 8—*Conveyancing Act*, 1881, *s.* 19, *subs.* 1 (3).

In a foreclosure action, in which the plaintiff was the first mortgagee of freehold hereditaments and had the legal estate vested in him, and the defendants were the mortgagor and a second mortgagee, the plaintiff moved for a receiver of the rents and profits of the mortgaged property on the authority of Judicature Act, 1873, s. 25, subs. 8, and the cases of *Pease* v. *Fletcher*, 45 Law J. Rep. Chanc. 265; L. R. 1 Chanc. Div. 273, and *Truman* v. *Redgrave*, 50 Law J. Rep. Chanc. 830; L. R. 18 Chanc. Div. 547. The second mortgagee consented to the appointment; but the mortgagor opposed it, contending that, if a receiver was necessary, the mortgagee ought himself to appoint one under the Conveyancing Act, 1881, s. 19, subs. 1 (3), and thus save the estate the cost of applying to the Court.

E. T. Holland for the first mortgagee.

St. John Clerke for the mortgagor.

Dobbs for the second mortgagee.

PEARSON, J., said that one of the objects of section 25, subsection 8, of the Judicature Act, 1873, was to give a mortgagee of freeholds, in whom the legal estate in

mortgaged property was vested, a right to have a receiver appointed by the Court, and that the power to do so was not taken away by section 19 of the Conveyancing Act. The appointment would be made, and any question as to the costs of the application would be dealt with by the taxing master.

Chancery Division.
PEARSON, J.
Dec. 10.
} ANON.

Practice—Rules of the Supreme Court, 1883, *Order LV., rule 2, subs. 2—Application for Payment out of Court—Sum not exceeding* 1,000*l.*—*The Lands Clauses Consolidation Act*, 1845—*Petition or Summons.*

An application had been made, by summons at chambers, for payment out of a sum of 700*l.* paid into Court under the Lands Clauses Act, 1845, and referred by the chief clerk to the judge.

PEARSON, J., said that, as CHITTY, J., in *Re Maidstone Railway Company*, L. J. Notes of Cases, p. 134, L. R. W. N., 204, had held that in such a case the application should be made by summons, he should direct his chief clerks, for the future, to allow these applications to be made by summons at chambers. The extra costs of a petition would, therefore, not be allowed.

Bankruptcy.
BACON, C.J.
Dec. 10.
} *Re* HEINTZ. *Ex parte* HEINTZ.

Liquidation by Arrangement—Close of Liquidation—Discharge of Debtor—After-acquired Property—Bankruptcy Act, 1869, *ss.* 20 *and* 28—*Bankruptcy Rules*, 1870, *Rule* 112.

Appeal from the Liverpool County Court.

The debtor filed his petition in September, 1881, under which the creditor agreed to a scheme of arrangement under section 28.

On October 19, 1881, at a general meeting of the creditors, the following resolutions were passed :—

1. That an offer to pay a composition of 2*s.* in the pound secured and payable in three months from the date of the meeting be accepted by the trustee.

2. That the composition be secured to the satisfaction of the trustee.

3. That on the trustee certifying that he is satisfied with the security, the debtor be allowed his discharge.

4. That the liquidation be closed on the trustee certifying that the composition has been paid; and

5. That the trustee be thereupon released.

On October 26, the trustee stated that he was satisfied with the security, and the resolutions were thereupon duly confirmed by the Court.

The debtor, however, did not apply for his discharge. The composition was not paid, and the sureties had to be sued; and, by this means, 1*s.* in the pound was provided for the creditors.

In March last, the debtor became entitled, under the will of his brother, to property worth about 2,300*l.* Since the death of his brother, the debtor had paid the remainder of the composition, which had been accepted by all the creditors.

On May 30, the debtor applied for his discharge, which was refused.

Doubts having arisen as to whether or not the debtor's after-acquired property vested in the trustee, application was made under section 20 and rule 112 to the Court for directions; and, on August 24, the County Court judge decided that the after-acquired property passed to the trustee for the benefit of the creditors.

The debtor appealed.

Walton for the appellant.

Crump and *Dodd* for the trustee.

The CHIEF JUDGE held that, the bargain between the debtor and his creditors contained in the resolutions of October 19, 1881, must be carried out in its entirety; that, the debtor having failed to pay the composition, was not entitled to his discharge; and, consequently, that the after-acquired property must be applied in the first instance in payment of 20*s.* in the pound to the creditors. The appeal would be, therefore, dismissed; but without costs.

Bankruptcy.
BACON, C.J.
Dec. 10.
} *Re* NICHOLSON. *Ex parte* QUINN.

Solicitor's Lien—Title Deeds held for Mortgagor and Mortgagee—Bankruptcy of Mortgagor—Costs due from Mortgagor—Sale of Equity of Redemption by Trustee.

Appeal from the Liverpool County Court.

Nicholson had deposited the title deeds of two freehold houses of his with his solicitors, Messrs. Quinn & Son, for safe custody. In March, 1881, Nicholson requested Messrs. Quinn to obtain for him an advance on this property, which they did from another client of theirs, a Mr. G. The mortgage was completed on March 4, 1881, when all charges in connection with the transaction were paid by Nicholson. Messrs. Quinn continued to hold the deeds for the mortgagee. Mr. G. Nicholson subsequently became further indebted to Messrs. Quinn for professional services. Nicholson afterwards presented a petition for liquidation, under which a trustee was appointed. The trustee sold the equity of redemption in the two freehold houses, and Messrs. Quinn claimed to have a lien on the title deeds of these houses as against the trustee. On November 2 last the County Court judge made an order declaring that Messrs. Quinn & Son had no lien as against the trustee, and directing the proceeds of sale of the equity of redemption to be paid to the trustee.

Messrs. Quinn appealed.

Mulholland, for the appellant, relied on *In re Messenger, ex parte Calvert*, 45 Law J. Rep. Bankr. 134; 3 Chanc. Div. 317.

Crump for the trustee.

The CHIEF JUDGE held that the deeds were the absolute property of the mortgagee, that the solicitor was not

entitled to any lien on them for costs due from the mortgagor, and that they must be delivered up to the trustee.

Appeal dismissed, with costs.

Queen's Bench Division. Dec. 10. } SHAW *v.* SIMMONDS.

Company—Companies Act, 1862 (25 & 26 *Vict. c.* 89), *s.* 4—*Association* '*formed after the Commencement of the Act.*'

Case stated on appeal from the County Court of Birmingham in an action brought on a promissory note made by the defendant in favour of the plaintiff. It appeared that the plaintiff was a trustee of a mutual loan society, which had advanced money to the defendant and taken the note to secure it. The society consisted of more than twenty persons, and was instituted in 1861, but had new members from time to time down to the present. It was not registered or incorporated. The County Court judge gave judgment for the plaintiff.

Nathan, for the appellant, argued that the association was illegal, and the action unmaintainable.

Jelf, Q.C., and *Hugo Jones* were not called on.

The COURT (DAY, J., and SMITH, J.) held that the association was not formed after the commencement of the Act, within section 4 of the Companies Act, 1862, and was therefore legal.

Appeal dismissed.

Queen's Bench Division. Dec. 10. } REGINA *v.* THE JUDGE OF THE CITY OF LONDON COURT.

County Courts—Admiralty Jurisdiction—32 & 33 *Vict. c.* 51, *s.* 2—'*The Carriage of Goods in any Ship.*'

Rule to the judge of the City of London Court to hear an admiralty action brought by a passenger on board the ship, who sued for the loss of his luggage.

G. Barnes showed cause, and submitted that the action was not brought on 'a claim arising out of an agreement made in relation to the carriage of goods in any ship' within 32 & 33 Vict. c. 51, s. 2.

E. Pollock, for the plaintiff, supported the rule.

The COURT (DAY, J., and SMITH, J.) decided that the agreement to carry the luggage was incidental to the agreement to carry the passenger, and was not an agreement to carry goods.

Rule discharged.

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COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 7.

Ex parte MERRIMAN. *In re* STENSON.

Bankruptcy—Proof—Application by one Creditor to Expunge Proof of Another—'Locus standi'—Bankruptcy Act, 1869, *s.* 20—*Bankruptcy Rules*, 1870, *rules* 67-74.

In this case the trustee had admitted the proof of N., a creditor. M., another creditor, who had also proved, made an application to the Court to remove the trustee on the ground that he had improperly and corruptly admitted N.'s proof. He also applied separately for an order expunging N.'s proof. The trustee was not served with notice of the second application. The registrar refused both applications, and M. appealed against the refusal of the second.

W. Willis, Q.C., and *Yate Lee* for the appellant.

Sidney Woolf, for the respondent, took the objection that a creditor has no *locus standi* to apply to have the proof of another creditor, which has been admitted by the trustee, expunged. He also contended that the creditor should have applied under section 20 of the Bankruptcy Act, 1869, giving notice to the trustee to order him to show cause why his decision should not be reversed, or to ask to have the trustee removed.

Cooper Willis, Q.C., for the trustee.

Their LORDSHIPS overruled the objection. They were of opinion that a creditor who has proved his debt is entitled to apply to expunge the proof of another creditor, which has been admitted by the trustee, even although a previous application made by him to remove the trustee on the ground that the proof which he seeks to expunge was improperly and corruptly admitted, has been dismissed by the Court.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 12.

ARMOUR *v.* WALKER.

Practice—Commission to take Evidence Abroad—Plaintiffs' own Evidence taken by Commission—Rules of Court, 1883, *Order XXXVII., rules* 5, 6.

The plaintiffs were a firm of merchants carrying on business in New York. The defendants, who resided in this country, were executors of a deceased partner in the plaintiffs' firm. It was sought to make them liable for about 75,000*l.* The defendants, whilst admitting that their testator was a 'special partner,' denied that he was a partner in the transaction in question.

CHITTY, J., granted a commission for the examination of the plaintiffs, certain American lawyers (who were to be examined as to American law), and other persons not named in the commission.

The defendants appealed.

Macnaghten, Q.C., and *H. Fellowes* for the appeal.

A. R. Kirby for the plaintiff.

Their LORDSHIPS dismissed the appeal. If there was no special reason for requiring the plaintiffs to face the jury in person, there was no reason why their evidence should not be taken by commission. The plaintiffs in the present case were New York merchants; there appeared to be no special reason for bringing them to this country, and it seemed that the case would turn chiefly upon questions of American law.

Court of Appeal.
BRETT, M.R.
BAGGALLAY, L.J.
BOWEN, L.J.
Dec. 12.

GRANT *v.* EASTON.

Practice—Action on Foreign Judgment—Debt arising out of Contract—Order III., rule 6—Leave to Sign Judgment—Order XIV.

Appeal from the Divisional Court.

In an action on a foreign judgment, leave was given by a master to the plaintiff to sign judgment for the amount claimed. The decision of the master was affirmed by BUTT, J., at chambers, and subsequently by the Divisional Court (GROVE, J., and MATHEW, J.).

The defendant appealed.

Rolland for the defendant.

Petheram, Q.C., and *Henry*, for the plaintiff, were not called upon.

Their LORDSHIPS dismissed the appeal, being of opinion that an action on a foreign judgment was an action of debt arising out of a contract within the meaning of Order III., rule 6, in which leave might be given to the plaintiff under Order XIV. to sign final judgment for the amount claimed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 12.

In re LACEY & SONS.

Solicitor—Costs—Taxation—Solicitors' Remuneration Act, 1881—*General Order under the Remuneration Act.*

An agreement for a lease entered into in December, 1881, contained a provision that the lessee should have the option of purchasing within five years the two plots leased at the respective prices of 1,125*l.* and 1,237*l.*; the costs of the vendor including the abstract of title to be borne by the purchaser. The lessee gave notice of his option to purchase in December, 1882; and the time for completion was March 25, 1883. The general order under the Solicitors Remuneration Act, came into operation on January 1, 1883. The purchaser gave notice that he required no abstract, but was content to assume title. His solicitors prepared draft conveyance and attended completion; the purchase, at the wish of the purchaser, being completed on February 16, 1883. The vendor's solicitors charged to purchaser 16*l.* 10*s.* and 17*l.* 10*s.* for costs under schedule 1 of the new scale. The purchaser objected. But as vendor's solicitors would not complete without payment of costs he paid them; and in October, 1883, took out a summons for taxation of the solicitors' bill.

BACON, V.C. ordered taxation on old scale.

The solicitors appealed.

Millar, Q.C., and *Bush* for appellants.

T. Brett, contrà.

Their LORDSHIPS held that there had been no pressure or special circumstances to entitle the purchaser to have taxation of a paid bill. But they expressed their opinion that the bill, if taxable, would have been taxed under the new remuneration order; and, further, that the charges made were excessive and exorbitant, and that if the bill could be taxed the charges made under schedule 1 for deducing title ought to be disallowed. No title had been deduced, and the rules did not authorise the charges mentioned in the scale if the work was not actually done.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 12.

LORD SALISBURY *v.* GREVILLE-NUGENT.

Practice—Probate—Allegation of Undue Influence—Particulars—Rules of Court, 1883, *Order XIX.*, *rules* 6, 7.

This was a probate action.

The defendants opposed probate and alleged undue influence. The statement of defence was delivered on October 23, the day before the new Rules came into operation. An intervener in the suit applied for particulars of the undue influence.

HANNEN, J., made an order for the disclosure of the names of the persons alleged to have exercised the undue influence, but declined to order any further particulars.

The intervener appealed.

Sir H. Giffard, Q.C., and *Bayford* for the appellant.

Keogh, contrà.

Their LORDSHIPS dismissed the appeal, holding that according to the practice of the Probate and Divorce Division an order for particulars must be confined to the names of the persons, and could not be extended to acts or details of undue influence.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 12.

In re GRIFFITH, JONES & Co.

Solicitor—Costs—Payment of Bill—Taxation—Pressure—Solicitors Act, 1843 (6 & 7 *Vict. c.* 73), *ss.* 33, 41.

A foreclosure action was brought by a mortgagee against his mortgagor, and foreclosure judgment was obtained. Before the foreclosure was made absolute the defendant offered to pay whatever the plaintiff considered due for principal, interest, and costs, so as to put an end to the action at once. The plaintiff named the sum of 263*l.* This sum was paid by the defendant to Messrs. Griffith, Jones & Co., the plaintiff's solicitor, and in the receipt given 61*l.* 7*s.* 8*d.* was stated to be for costs.

On the application of the defendant, KAY, J., made an order for the delivery and taxation of the solicitors' bill of costs.

The solicitors appealed.

Bosanquet, Q.C. (*C. H. Turner* with him), for the appellants.

Rigby, Q.C., and *J. M. Chapman*, for the mortgagor, contended that although the solicitors' costs had been paid, the fact that the mortgagor was obliged to pay them amounted to pressure which was a special circumstance bringing the case within section 41 of the Solicitors Act, 1843.

Their LORDSHIPS, however, allowed the appeal, being of opinion that the 263*l.* was a lump sum paid for the compromise of the action, and that there were no special circumstances entitling the mortgagor to tax the costs which had been paid.

Court of Appeal.
BRETT, M.R.
BAGGALLAY, L.J.
BOWEN, L.J.
Dec. 13.

SCARLETT *v.* HANSON.

Judgment Creditor—Bill of Sale—Interpleader—Duty of Sheriff—Equitable Interest—Common Law Procedure Act, 1860 (23 & 24 *Vict. c.* 126), *s.* 13.

Appeal from the judgment of MANISTY, J., at the trial without a jury.

The plaintiff, a judgment creditor, delivered a writ of *fi. fa.* to the defendant, the sheriff. The sheriff seized under it; but, on learning that a third person had a bill of sale over the goods seized, he withdrew, did not interplead, and returned *nulla bona*. The judgment debtor went into liquidation, when it proved that the goods in question exceeded in value the amount for which the bill of sale was given as security.

In an action for damages, Manisty, J., gave judgment for the defendant.

The plaintiff appealed.

R. V. Williams for the appellant.

Cock and *C. Scott*, for the defendant, were not called on.

Their LORDSHIPS dismissed the appeal, holding that the Common Law Procedure Act, 1860, imposed no new duty on the sheriff, and that he was not thereby empowered to seize such an equitable interest as that which alone belonged to the judgment debtor.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 14.

Ex parte LANCASTER. *In re* MARSDEN.

Fraudulent Preference—Non-appearance to Writ—Judgment in Default—Elegit—Suffering Judicial Proceeding—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 92.

In April, 1882, Marsden was indebted to his father-in-law, Turner, to a considerable amount for advances made to him. On May 6, 1882, Turner issued a writ against the debtor, specially indorsed, and the debtor not having entered an appearance thereto, on May 15 judgment was signed for Turner for 3,147*l.* On the same day he issued a writ of *elegit*, and on May 19 goods to the value of 1,983*l.* belonging to the debtor were delivered by the sheriff to Turner. On May 23 Marsden filed a liquidation petition, under which a trustee was appointed. He had not committed any act of bankruptcy before the filing of the petition. The trustee applied to the County Court for an order declaring the judgment and the proceedings under it void as against him, on the ground that it was 'a judicial proceeding' suffered by the debtor 'with a view of giving' a preference within the meaning of section 92 of the Bankruptcy Act, 1869. The County Court judge refused the application, and the CHIEF JUDGE dismissed the trustee's appeal against that refusal.

The trustee appealed.

Aspland for the appellant.

Winslow, Q.C., and *Herbert Reed*, for the respondent, Turner, were not heard.

Their LORDSHIPS dismissed the appeal. They thought that, although the circumstances were suspicious, there was not enough to show that the debtor had acted as he did with a view of giving Turner a preference. It did not appear that at the time the writ was issued and judgment was obtained, there was any other creditor in a position to take proceedings in bankruptcy against the debtor. Had it been so the matter might have been very different.

Court of Appeal.
BRETT, M.R.
BAGGALLAY, L.J.
BOWEN, L.J.
Dec. 17, 18.

BURTON *v.* ENGLISH.

Charterparty—Carriage of Deck Cargo at Merchant's Risk—Loss by Jettison—General Average Contribution.

Appeal from a judgment of the Queen's Bench Division on a special case.

The case is reported 52 Law J. Rep. Q.B. 386.

The question raised was whether the stipulation in a charter-party that the steamer should be provided with a deck cargo, if required, at full freight, but 'at merchant's risk,' excluded any right on the part of the plaintiffs, the charterers, to general average contribution from the defendants, the shipowners, in respect of loss by jettison of a portion of a deck cargo shipped by the charterers.

The Queen's Bench Division (CAVE, J., and DAY, J.) gave judgment for the defendants.

The plaintiffs appealed.

Cohen, Q.C., and *Gorell Barnes* for the plaintiffs.

Myburgh, Q.C., and *Tyser* (*Webster, Q.C.*, with them) for the defendants.

Their LORDSHIPS allowed the appeal; being of opinion that the stipulation was intended to cover every act done by the captain, as servant of the shipowner, for which the owner, but for the stipulation, would have been liable; but that the present claim did not arise from any act of the captain as servant of the shipowner; and, consequently, the stipulation did not exclude the plaintiffs' right to general average contribution from the shipowner in respect of the loss by jettison of the deck cargo.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Dec. 10.

HOYNES *v.* KELLY.

Bankruptcy Act, 1869, *s.* 49—*Debt Incurred by Breach of Trust—Bankrupt, having obtained Discharge, whether Liable.*

By a deed of agreement the defendant Kelly declared that he would stand and be possessed of a certain patent which had been absolutely assigned to him, and of the profits of working the same, for the benefit of himself and the plaintiffs in certain shares. The entire management of the business of working the patent was to be in the uncontrolled discretion of Kelly, without any interference whatever by the plaintiffs. The deed contained no provision for the receipt of any remuneration or commission by Kelly for his services. Nevertheless, in his accounts with the plaintiffs, Kelly sought to charge in reduction of the balance against him sums for commission, and he persisted in so doing although apprised that the charge was not permissible. Kelly subsequently became bankrupt, and obtained his discharge, and the question was whether the amount of the overcharge for

commission was a debt incurred by breach of trust within the meaning of section 49 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), for which Kelly remained liable, notwithstanding his discharge.

Loughborough for the plaintiffs.

Dunham for Kelly.

Creed for the trustee in bankruptcy.

KAY, J., said that there might be cases in which a trustee claiming in account items of discharge in order to keep trust moneys in his own pocket would remain liable as for a debt incurred by his breach of trust. But in this case there had been no concealment, and the claim for commission, though not sustainable, was not so improper or unreasonable as to amount to a breach of trust within the above section, and, therefore, Kelly, having obtained his order of discharge, was not liable.

Chancery Division. CHITTY, J. Dec. 12. } BULMER *v.* BULMER.

Railway Accident—Compensation—Compromise—Lord Campbell's Act (9 & 10 *Vict. c.* 93)—*Amendment Act* (27 & 28 *Vict. c.* 95)—*Distribution of Fund.*

A sum of money was received from a railway company, by way of compensation, by the executors of a person whose death had resulted from injuries received in an accident on the railway, no action having been brought under Lord Campbell's Act (9 & 10 Vict. c. 93).

The executors brought an action in the Chancery Division against all the relatives of the deceased referred to in section 2 of 9 & 10 Vict. c. 93, asking for a declaration as to the persons entitled to the money.

Held that the Court could distribute the fund amongst such of the relatives only as suffered damage by reason of the death in the same manner as a jury would in an action under the Act.

Waller, Q.C., and *Bunting*; *E. Catler*, *T. L. Wilkinson*, *S. Dickinson*, *H. Warlters Horne*, *L. L. Shadwell*, *G. B. Calvert*, *Casserley*, and *T. M. M. Wilde* for the parties.

Chancery Division. NORTH, J. July 2, 3, 4, 5. Dec. 17. } TRUMAN *v.* THE LONDON, BRIGHTON, AND SOUTH COAST RAILWAY COMPANY.

Railway Company—Nuisance—Injunction.

This was an action brought by owners and occupiers of villa residences to restrain the defendant company from using a new cattle dock and sidings for loading and unloading cattle and other animals, and keeping them there, so as to cause a noisy nuisance to the inhabitants.

The dock and sidings were erected on land not within the limits over which the company had power to take land compulsorily. The company, however, had power to take land by agreement for the purposes of their undertaking, not exceeding in the whole fifty acres. They had acquired such land by agreement within the limit of fifty acres, and the dock and sidings in question were built upon part of such land.

Higgins, Q.C., *Barber, Q.C.*, and *F. Young* for the plaintiffs.

Rigby, Q.C., and *Ingle Joyce* for the defendant company.

NORTH, J., held the action was within the principle of *The Metropolitan Asylums Board* v. *Hill*, 50 Law J. Rep. Q. B. 253, and granted an injunction.

Queen's Bench Division. Nov 28. } PALMER *v.* JOHNSON.

Vendor and Purchaser—Particulars of Sale—Error in Description—Misrepresentation of Value.

The defendant put up for sale by auction some freehold property, described in the particulars of sale as producing a net rental of 39*l.* per annum. The plaintiff purchased for 650*l.*, relying on the representation as to the rental. The contract contained a stipulation that 'if any error, mis-statement, or omission in the particulars be discovered, the same shall not annul the sale, but compensation shall be allowed by vendor or purchaser as the case may be.' A conveyance of the property in fee was afterwards executed by defendant to plaintiff, and the latter took possession. Shortly after he discovered that the net rental was considerably under 39*l.*, and he then brought this action to recover as damages the amount which he had been induced by the defendant's untrue representations to give above the value of the property. The jury negatived fraud, but found that plaintiff had purchased, relying on the truth of the statement in the particulars, and they gave a verdict for 50*l.*

The case was reserved for further consideration, the defendant contending that, as the conveyance had been executed, the plaintiff could not maintain the action in the absence of fraud—on the authority of *Jolliffe* v. *Baker*, 52 Law J. Rep. Q.B. 600.

Buszard, Q.C., and *Stanger* for the plaintiff.

Graham for the defendant.

Cur. adv. vult.

SMITH, J., gave judgment for the plaintiff, holding that the preliminary contract for compensation was not abrogated by the deed of conveyance, the latter being a simple conveyance in fee without any covenants, and that, the contract standing, the plaintiff was entitled to sue upon it.

Queen's Bench Division. Dec. 10. } SHAPCOTT *v.* CHAPPELL.

Practice—Motion for New Trial from County Court—Rejection of Evidence—Order XXXIX., rule 6—*No New Trial where no Miscarriage.*

Motion for a new trial under section 6 of the County Court Act, 1875 (38 & 39 Vict. c. 50), on the ground that the County Court judge had improperly rejected evidence. On argument of the rule the Court were of opinion that the evidence should have been admitted, but they thought that if admitted the result of the trial would not have been affected and that no miscarriage had been occasioned by its rejection.

Kemp, Q.C. (*Proudfoot* with him), showed cause.

Hannen, in support of the rule, contended that the Court had no alternative, but must order a new trial, on being satisfied that the evidence was improperly rejected; the powers of the Court under the Rules of the Judicature Act applicable to new trials in the High Court not being applicable to County Court actions.

The COURT (LORD COLERIDGE, L.C.J., STEPHEN, J., and MATHEW, J.) discharged the rule, holding that Order XXXIX., rule 6, of the Rules of 1883, being general in its terms did enable the Court to refuse to grant a new trial in County Court actions as in High Court actions where they were of opinion, as here, that no miscarriage had been occasioned by the rejection of evidence.

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ISLE OF WIGHT RAILWAY COMPANY *v.* TAHOURDIN.

Company—Requisition to Directors to hold Meeting of Shareholders—Meeting called by Directors for one of Purposes named in Requisition—Meeting called by Requisitionists—Companies Clauses Consolidation Act, 1845, *ss.* 70, 89, 90, 91.

A requisition was signed by certain shareholders to the directors of this company asking them to call an extraordinary meeting of shareholders—(1) To appoint a committee to inquire into the working and general management of the company and the means of reducing the working expenses; to empower such committee to consolidate all or any of the duties of secretary, general manager, accountant, and cashier, and to concentrate the offices in the island, and to remove any of the officers or servants of the company, and appoint others, and to authorise and require the directors to carry out the recommendations of the committee. (2) To remove, if deemed necessary or expedient, any of the present directors, and to elect directors to fill any vacancies on the Board. The directors on the receipt of this requisition issued a notice convening a meeting for the purpose of considering the demand for the appointment of a committee to inquire into the working and management of the company, and the means of reducing the working expenses.

The meeting was held on November 27, and the appointment of a committee was negatived. The requisitionists did not attend the meeting, but issued a notice calling a meeting for the purposes mentioned in their original requisition. The directors then brought this action to restrain the holding of this meeting.

KAY, J., granted the injunction, holding that it would not be within the power of a general meeting to empower a committee to do all the things mentioned in the requisition, and that the part of it which related to the removal of the directors was not sufficiently particular.

The defendants appealed from the decision.

Shiress Will and *G. Tahourdin* for the appellants.

Hastings, Q.C., and *Beale*, *contrà*.

Their LORDSHIPS allowed the appeal, with costs.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 14, 18, 21.

Ex parte SALTING.
In re STRATTON.

Bankruptcy—Principal and Agent—Marshalling.

Appeal against a decision of Mr. Registrar Pepys, sitting as CHIEF JUDGE.

Stratton was a member of the firm of Warre Brothers, merchants, of whom Salting purchased brandy, and,

after having paid for it, left it in their hands. Without his knowledge, and without the knowledge of Stratton, who took no part in the management of the business, the firm pledged the brandy with the Union Bank of Scotland as security for moneys advanced. The bank also held other securities, including a guarantee from Stratton. In March, 1882, the firm filed a liquidation petition, and the creditors resolved upon a liquidation and appointed a trustee. In April, 1882, the bank sold the brandy and took the proceeds in part payment of the debt due to them from the firm.

Salting claimed to prove against Stratton's separate estate, which was sufficient to cover the balance of the firm's debt to the bank as well as the value of the brandy.

The trustee rejected the proof on the ground that there can be no proof against the separate estate of an innocent partner in respect of a fraud committed by his firm.

The registrar upheld the trustee's decision, and Salting now appealed.

Davey, Q.C., *Cooper Willis, Q.C.*, and *J. G. Wood* for the appellant.

Winslow, Q.C., *Marten, Q.C.*, and *F. W. Hollams* for the trustee.

Their LORDSHIPS allowed the appeal. They were of opinion that the case came within the decision in *Ex parte Alston*, L. R. 4 Chanc. Div. 168, and that therefore Salting was entitled to have the securities marshalled, and consequently that he could prove against the separate estate of Stratton for the amount realised by the sale of the brandy.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
FRY, L.J.
Dec. 21.

Ex parte WARBURG. *In re* WHALLEY.

Bankruptcy Petition—Debtor's Summons—Substituted Service—Time—Bankruptcy Rules, 1870, *rules* 59, 61.

This was an appeal against a refusal by the registrar, sitting as chief judge in bankruptcy, to make an order of adjudication against the debtor, Whalley.

On March 22, 1883, Warburg had issued a debtor's summons against Whalley, but as it was found impossible to effect personal service of the summons on April 16, the Court being satisfied that the debtor was keeping out of the way to avoid service, an order was made for substituted service. Whalley having failed to comply with the summons, Warburg presented a bankruptcy petition against him, alleging as an act of bankruptcy the non-compliance with the summons.

The registrar refused to grant an order of adjudication against him, on the ground that service of the summons had not been effected within the time (twenty-one days) limited by rule 59 of the Bankruptcy Rules of 1870.

Warburg appealed.

Cooper Willis, Q.C., for the applicant.

Their LORDSHIPS thought that the registrar had been too cautious, and that there had been an act of bankruptcy on the part of the debtor. They said that rule 59 only applied to personal service, but that the case came within rule 61, which applied where personal service could not be effected under rule 59, and under rule 61 there was no time limited within which the substituted service must be effected.

HIGH COURT OF JUSTICE.

Crown Case Reserved.
Dec. 21.

REGINA *v.* HATTS & CULFFE.

Coram LORD COLERIDGE, L.C.J., DENMAN, J., HUDDLESTON, J., HAWKINS, J., and STEPHEN, J.

Evidence—Admission made under a Threat or Inducement.

Case reserved by the Recorder of London.

The prisoners were convicted of conspiring to defraud. The prosecutor, who employed one of the prisoners, having called him into a room, in the presence of two officers, said, 'I presume you know who these gentlemen are?' The prisoner said 'Yes;' and one of the police-officers said, 'We are police-officers.' The prosecutor then said, 'I know what has been going on between you and C. (the other prisoner) for some time, you had better speak the truth.' The prisoner thereupon made admissions of the guilt of himself and the other prisoner.

Forbes, Q.C., and *Besley* appeared for the prosecution.

A. Collins, Q.C.; and *Fullerton* for the prisoner.

HELD, that the evidence of such admissions ought not to have been received.

Conviction quashed.

Chancery Division.
KAY, J.
Dec. 1, 3, 11.

In re BELL. CARTER *v.* STADDEN.

Will—Construction—'Survivors'—Gift to Husband of Share to which his Deceased Wife would have been entitled if Living.

The testator, who died in 1879, by his will in 1863 gave his real and personal estate to trustees to sell and pay debts, and to hold the residue upon trust to divide among his four sisters, M. A. J., E. (the wife of G. M.), C. (the wife of J. S.), and S. B., in equal shares, provided that in case any of his sisters should die in his lifetime leaving any children surviving, they should be entitled to their parents' share, provided also that in case of the death of any or either of his sisters in his lifetime without leaving any child or children, husband or husbands, surviving, the shares of such of them so dying should be paid to the 'survivors or survivor' of his sisters equally if more than one, or if only one surviving, then to that one only; but if either one or more of his sisters should die in his lifetime leaving a husband or husbands surviving, he directed that such surviving husband or husbands should be entitled 'to the share to which his or their deceased wife or wives would have been entitled if living,' and in that event he gave such share or shares to such surviving husband or husbands, and to be paid to him or them accordingly.

M. A. J. died in 1868, and E. M. in 1872, each of them leaving children who survived the testator. S. B. died a spinster in 1876, and C. S. died in 1878, leaving no children, but a husband, who now claimed a moiety of the fund—*i.e.* the original share of his wife, and the share which he contended accrued to her on the death of S. B.

W. Pearson, Q.C., and *E. W. Byrne; Warmington, Q.C.*, and *Northmore Lawrence; F. Thompson, Church, F. L. Wright*, and *Stanley Boulter* appeared.

KAY, J., said that there was no reason for departing from the literal meaning of the words of the will; the husband was intended to take all which his wife would

have been entitled to if living at the testator's death: his wife having survived her sister would have been entitled to a moiety, and he was therefore now entitled to that moiety.

Chancery Division. Kay, J. Dec. 11. } *In re* Bellamy. Elder *v.* Pearson.

Husband and Wife—Chattels Real of Wife—Right of Husband to Wife's Equitable Reversionary Interest in Leaseholds for Years.

Certain hereditaments held for long terms of years were, by deed dated in 1865, assigned to trustees upon trust, after three successive life interests, to assure the same unto M. P. absolutely. M. P. married C. in 1882, and died shortly afterwards, leaving him surviving. The last surviving tenant for life died in 1883. The question was whether the interest of the wife in the leaseholds vested in C. *jure mariti*, or whether it was necessary for him, in order to complete his title, to take out administration to her.

Hull, Vernon Smith, and *Charles Browne* appeared.

Kay, J., held that the wife's vested reversionary interest was not an unassignable possibility, but was assignable by C. during the coverture; that it therefore vested in C. *jure mariti*; and that it was not necessary for him to take out administration.

Chancery Division. Kay, J. Dec. 8, 14. } Mellor *v.* Porter.

Practice—Foreclosure—Infant—Day to Show Cause—Equitable Mortgage.

This was an action for foreclosure, brought by an equitable mortgagee against the widow and heir-at-law of the mortgagor, who had died intestate seised in fee of the mortgaged property. The heir-at-law was an infant.

The defendants did not appear.

The plaintiff now moved for judgment in default of appearance, and the only question was whether a day to show cause ought to be given to the infant defendant.

Renshaw, for the plaintiff, submitted that it was not necessary to give the infant a day to show cause.

Kay, J., following *Price* v. *Carver* (3 My. & Cr. 157) and an unreported case of *Backhouse* v. *Hornsey* (before Jessel, M.R., on December 20, 1880), held that the judgment should direct the infant to convey when he attained twenty-one and give him a day to show cause.

Chancery Division. Kay, J. Dec. 21. } Lovell *v.* Wallis.

Practice—Jurisdiction—Evidence—Consent to take Evidence by Affidavit—Power of Court to refuse to allow Affidavits to be read.

This was an action to set aside a voluntary settlement in which the evidence was, by consent, taken by affidavit. One of the persons interested under the settlement was an infant at the time when the action was instituted. There were also possible unborn persons interested who were represented only by trustees. When the case was brought on, and the affidavits on both sides read, his lordship thought them so unsatisfactory that he desired that the witnesses should be examined *viva voce* in Court, and refused to allow the affidavits to be read. The parties desired to read the affidavits, and objected that the Court had no jurisdiction to refuse to allow them to be read. His lordship specially reserved the question for consideration.

Kekewich, Q.C., and *Ingle Joyce* for the plaintiff.

Graham Hastings, Q.C., and *J. M. Lloyd* for the defendants.

Kay, J., referred to the statute, 15 & 16 Vict. c. 86, ss. 16, 39, and the Rules of Court, 1883, Order XXXVII., rules 1, 5, and held that the Court had jurisdiction to refuse to allow the affidavits to be read. He made an order that the witnesses should be examined orally at the trial, and that the affidavits should not be read.

Chancery Division. Chitty, J. Dec. 21. } *In re* The Mercantile Mutual Marine Insurance Association.

Limited Company—Bankruptcy of Shareholder—Proof of Future Calls—Liability capable of being fairly estimated—Bankruptcy Act, 1869, *s.* 31—*Companies Act*, 1862, *ss.* 75, 77.

Where a shareholder of a limited company becomes bankrupt, his liability to future calls may be estimated and proved as well when the company is not being wound up as when it is, and in the event of the bankrupt obtaining his discharge he will be freed from liability in respect of calls. *Furdoonjée's Case*, L. R. 3 Chanc. Div. 264 considered.

Luce, Q.C., and *Badcock, Romer, Q.C.*, and *H. B. Buckley* for the parties.

Chancery Division. North, J. Dec. 21. } Ellick *v.* Cox.

Will—Construction—Next Male Kin.

This was an adjourned summons to determine the construction of an ultimate devise of a house to 'the next male kin.' The testator left two sisters, his only relations in the nearest degree of kinship, one of whom had one son, the plaintiff; the other had four sons living at the testator's death; he had no other nephew.

Stallard for the plaintiff.

Bradford for defendants.

North, J., held the five nephews took as joint tenants.

Chancery Division. Pearson, J. Dec. 13. } *In re* The Hoyland Silkstone Colliery Company (Limited).

Practice—Company—Winding up—Provisional Liquidator—Adjournment to Chambers of Order for Appointment—Rules of Court, 1883, *Order L., rule* 17.

Motion for the appointment of a provisional liquidator by a creditor who was petitioning for the winding up of the company.

Cookson, Q.C., and *Clare* for the application.

Cozens-Hardy, Q.C., and *Bardswell* for the company.

Pearson, J., made the order, subject to production of an affidavit of fitness, and immediately adjourned the order into chambers for completion, stating that he

intended to apply to appointments of provisional liquidators the provisions of Order L., rule 17, with respect to appointments of receivers, as delay and suspense would be saved by that course being adopted.

Chancery Division. PEARSON, J. Dec. 14. } HARVEY *v.* THE CROYDON UNION RURAL SANITARY AUTHORITY.

Practice—Order by Consent—Facts not stated to Court—Consent withdrawn before Order drawn up, passed, and entered.

Motion by the plaintiffs that an order of August 15 might be ordered to be drawn up, passed, and entered. That order, by which, among other things, the defendants were restrained from pulling down certain houses belonging to the plaintiffs, had been taken by consent, without the facts being stated to the judge; but, after an appointment for settling the order with the registrar had been obtained, the defendants' solicitor wrote to the plaintiffs that their consent had been given under a misapprehension, and that they thereby withdrew it. The registrar had consequently declined to complete the order without the direction of the Court.

Swinfen Eady for the plaintiffs.

J. Henderson for the defendants.

PEARSON, J., said that, as the order was not an order made by the judge after hearing the facts, but an order arranged between the parties, from which the defendants had withdrawn their consent while it was still incomplete, he must follow *Rogers* v. *Horn*, 26 W. R. 432, and refuse to direct the order to be completed against the will of the defendants. But he gave no costs of the application.

Chancery Division. PEARSON, J. Dec. 17. } *Re* KNIGHT'S TRUSTS.

Practice—Petition—Costs of Trustee—Rules of the Supreme Court, 1883, *Order LXV., rule* 1—*Trustee 'unreasonably resisting any proceeding.'*

Sarah Knight died in 1859, having by her will bequeathed a legacy of 150*l.* in trust for Mrs. Walker for life, with remainder to her daughters, who should attain twenty-one or marry.

Richard Balchin, her sole executor, purchased in his name a sum of 114*l.* New Three per Cent. annuities to answer this legacy, and executed a power of attorney to bankers to receive the dividends. Mrs. Walker received the dividends, under this power of attorney, up to April, 1882.

Richard Balchin died in the year 1870, having appointed Henry Balchin his sole executor, who duly proved his will.

Henry Balchin died in the year 1879, having appointed Clift, a solicitor, and Jervis the executors and trustees of his will, and made them his residuary legatees. They duly proved his will.

In the year 1882 the Bank of England received notice of the death of Richard Balchin.

In May, 1883, Mrs. Walker's solicitor obtained from Clift the probate of the will of Henry Balchin, in order to get the stock transferred into the names of Clift and Jervis; and, when the transfer had been made, wrote to Clift, enclosing a power of attorney to banker to receive the dividends on the stock, and asking him to get it executed by himself and his co-trustee.

Between May and July, 1883, Mrs. Walker's solicitor frequently applied to Clift to get the power of attorney executed, but without success.

In July, 1883, Clift placed the matter in the hands of another solicitor to act for him.

In November, 1883, Mrs. Walker, her two married daughters (her only children) and their husbands, presented this petition, asking for the appointment of new trustees and a vesting order, and that Clift and Jervis, or one of them, might pay the costs of the petition.

Higgins, Q.C., and *Manby* for the petition.

Colquhoun for the respondents.

PEARSON, J., held that the conduct of the respondents had been very vexatious. He assumed that the stock had been transferred into their names, with the assent of Clift, acting on behalf of himself and Jervis. They had thus practically accepted the trusts of the will of Sarah Knight, and were bound to pay the dividends on the stock to Mrs. Walker; and, if this had simply been a petition for payment of the dividends to Mrs. Walker, he should have made them pay the costs of it. There must be an appointment of new trustees and a vesting order, as prayed for, and the respondents must pay so much of the costs of the petition as would have been incurred if it had been simply a petition for payment of the dividends to Mrs. Walker.

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